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INCORPORATING Stolen Art Alert

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COVER: Edgar Hilaire Germain Degas (French, 1834–1917).
Landscape with Smokestacks, 1890. Collection, The Art Institute of Chicago.
"Purchase from the collection of Friedrich and Louise Gutmann and a
gift of Daniel C. Searle." See p. 7

Letters:

More on the French Law of Experts

Editor's note: The Summer 1998 issue of IFAR JOURNAL *featured an exchange between John Merryman and Franklin Feldman regarding an article in the Spring issue on The French Law of Experts. The letter below continues that dialogue.*

To the Editor:
The legal power given to the holder of the French moral right has significant legal and practical consequences, as French law and French art world practice amply demonstrate. In advising a client in a case of uncertain or contested attribution, a lawyer who failed to take this power into account would ill serve her client. Readers of the *IFAR Journal* should be so informed.

As to catalogues raisonnés, holders of the moral right frequently *are* authors or co-authors of catalogues raisonnés, as Mr. Fabris was in the *Utrillo* case (read my article or, better, read the French sources I cite in it). Calling something a catalogue raisonné works no magic. Anyone can publish a book about an artist's work and call it a catalogue raisonné, but in France the holder of the artist's moral right can sue to suppress one that misrepresents the artist's work.

John Henry Merryman
Stanford Law School

IFAR cannot publish all letters received and reserves the right to edit those it does for length and clarity. Please keep letters brief.

The Steinhardt Affair

To the Editor:
Jack A. Josephson, IFAR Chairman, in his article "A Comment on the Steinhardt Affair" asked "What due diligence was Mr. Steinhardt's responsibility? Was he to administer a lie detector test to a man he had done business with for many years?...Mr. Steinhardt simply relied on a man he trusted as a reputable dealer, and with whom he was well acquainted. He simply did what any cautious person would do to try to protect himself when expending over $1,000,000."

Not only did Mr. Steinhardt, as a practical matter, fail to do what any cautious person should have done when acquiring a valuable antiquity in 1998, but he also failed to undertake appropriate due diligence inquiry as required by the courts of New York and other courts throughout the United States.

International art theft and related trafficking has been and continues to be a multibillion dollar a year industry. Works of art plundered during the World War II era also increasingly are returning to the market and being found in decedents' estates. The lax commercial conventions that apply at all stages of the art market enable trusting private collectors to acquire stolen works and to donate them to charitable organizations. For this reason, leading art world authorities have declared that the "art market is the only economic sector in which one runs a 90% risk of receiving stolen goods," and "85% of all stolen art is hanging on the walls or sitting on the pedestals of unsuspecting collectors."[1]

For over 30 years, U.S. courts and legal commentators have rebuked the casual, "ask no questions" conventions of the art market. They have enjoined collectors and dealers to take greater precautions against acquiring stolen art. In comparing the equitable position of theft victim and good faith purchaser, courts have made clear that this equitable test is weighted in favor of the victim. As the Court of Appeals of New York instructed: "In our view, the better rule gives the owner (theft victim) relatively greater protection and places the burden of investigating ... a work of art on the potential purchaser."[2]

A *Washington Post* editorial stressed that under well established U.S. law, collectors will be required to return stolen art they mistakenly acquired unless they can show they diligently sought to avoid acquiring stolen materials.[3]

Accordingly, the failure of a buyer to perform an appropriate due diligence investigation enables a court – under the equitable balancing standard – to decide that even minimal diligence by a former owner in reporting a loss is sufficient to allow the victim to recover the item.[4]

[1] October 1997 position paper of the not-for-profit Society to Prevent Trade in Stolen Art citing quotations from Elizabeth des Portes, Secretary General of the International Council of Museums and Constance Lowenthal, former Executive Director of IFAR.

[2] *Solomon R. Guggenheim Foundation* v. *Lubell*, 569 N.E. 2d 426, 431 (N.Y. 1991)

[3] *The Washington Post* Editorial, November 5, 1996, "Getting Back Your Gold" at A1.

[4] See, e.g., *Erisoty* v. *Rizik*, No. 93-6215, 1995 U.S. Dist. LEXIS 2096 (E.D. Pa. 1995), aff'd No. 95-1807 (3d Cir 1996).

What degree of diligent investigation is entailed in any situation is informed by the specific facts and circumstances including the sophistication of the potential purchaser and the value of the item.[5]

Reliance by Mr. Steinhardt on the investigation of his dealer was not well founded. The failure of art dealers to inquire into the background and title to works they sell is celebrated. In a 1981 case before the Court of Appeals of New York, the Art Dealers Association of America, Inc. filed an amicus brief asserting (in the court's words) "that the ordinary custom in the art business is not to inquire as to title."[6] This practice is highlighted by the third party claim filed in August, 1998 by the Seattle Art Museum against Knoedler & Co. Gallery of New York City[7] in which the Museum alleges affirmative fraud as to ownership by the Gallery in the initial sale of the painting to the Museum's donors.

Mr. Steinhardt as a wealthy, sophisticated art collector should have protected himself by undertaking a comprehensive, legally informed multi-source investigation as to whether the phiale was reported as or reasonably believed to have been stolen. Judicial decisions and legal commentators have identified appropriate sources of inquiry to include publicly available databases of stolen art, art world professionals and experts, auction houses, museums and affected governments with a particular relationship to the work of art or artist – the very type of inquiry supported by the Association of Art Museum Directors.[8]

Mr. Steinhardt in acquiring other property of comparable value would have directly or through professionals asked many questions about potential competing ownership interests as opposed to simply relying on a broker. What makes $1,000,000 spent on art different?

Lloyd P. Goldenberg
The writer is a Managing Member of Trans-Art International, L.C.

AUTHOR'S RESPONSE

I am pleased that my commentary on the Steinhardt lawsuit aroused the interest of Lloyd Goldenberg and flattered that it provoked such a thoughtful response. Mr. Goldenberg makes a strong case for using due diligence in purchasing works of art, and I do not disagree with that. My purpose was to establish what role dealers have in such transactions. In my opinion, they have at least three responsibilities: guaranteeing authenticity, providing connoisseurship, and warranting title.

Mr. Goldenberg compares Mr. Steinhardt's reliance on his dealer with the criteria used by museums. As I pointed out in my article, the private collector, including Mr. Steinhardt, has neither the knowledge nor the facilities of institutions. It is true that it is usually possible for an individual to seek advice from professionals as to the question of authenticity, which Mr. Steinhardt did, but rarely can a museum staffer offer an opinion on title.

Mr. Goldenberg makes several suggestions regarding using due diligence in purchasing the phiale. First, he discusses utilizing databases of stolen art. In this case, the object was never reported as being stolen. Requesting information from authorities of countries that may have been the origin of antiquities is a tricky matter for a private individual. For example, how many and which countries does one query? Remember that the Sevso Treasure was claimed by four nations. Also, to whom do you write? Is there a national agency, or do you ask the superintendent of antiquities in a local region? Mr. Goldenberg also suggests consulting with experts. Mr. Steinhardt took the phiale to the Metropolitan Museum of Art. There he was informed that they regarded it as ancient, but I sincerely doubt that they suggested that it was stolen. They would have had no idea that there was a claimant who would surface at a later date.

All of this leads me back to my original contention, the best way to buy art is through a reputable dealer who knows how to obtain information about title, provenance, and authenticity. Mr. Goldenberg suggests consulting with auction houses. Are they not dealers themselves? Are they necessarily more competent than an individual dealer? I do not argue with Mr. Goldenberg's contention that one must be more and more careful in buying art of any kind. Forgeries abound, along with material that may have been either stolen or looted. I continue to believe that an honest and reputable dealer is the first line of defense for a private buyer.

Jack A. Josephson

[5] See, e.g., *Erisoty*, supra note 4.

[6] *Porter* v. *Wertz*, 412 N.E. 2d 500, 502 (N.Y. 1981).

[7] No. C98-1073D, U.S. District Court for the Western District of Washington at Seattle.

[8] See also June 4, 1998 Report of the AAMD Task Force on the Spoliation of Art during the NAZI/World War II Era (1933–45). [*Editor's Note:* This report is printed in full on p. 20 of this issue.]

New York's Statute of Limitations

Editor's Note:The Summer issue of IFAR JOURNAL *featured an article on the Statute of Limitations in New York. This issue contains an article presenting an overview of the Statute as determined by different state jurisdictions.*

To the Editor:
I write to respond to Franklin Feldman's article in your Summer 1998 issue, entitled "New York's Statute of Limitations with Respect to Stolen Art and Holocaust Claims." While written with the ostensible motive of protecting the interests of holocaust victims whose art was stolen during World War II, Mr. Feldman's analysis of New York's so-called "borrowing statute" is, in fact, a reckless invention that appears to have been foisted upon IFAR and the public as part of a campaign to convince the New York State legislature to adopt rules that will make it far easier for New York dealers and collectors to defeat the claims of holocaust and other art theft victims and retain plundered works of art.

New York is presently regarded as a favorable forum for reclaiming stolen art because the state's highest court, in the celebrated *Lubell* case, held that the statute of limitations clock does not start ticking against a suit to recover stolen art from a good faith purchaser until the purchaser refuses the theft victim's demand to return the work.[1] So long as the plaintiff files suit within three years after the demand is refused, the lawsuit is timely for purposes of New York's statute of limitations. Mr. Feldman argues, however, that this analysis overlooks the borrowing statute, which essentially provides that a non-resident of New York who wishes to sue in New York to enforce a claim "accruing without the state" must satisfy the statute of limitations of both New York and the state where the cause of action accrued.[2] According to Mr. Feldman, this presents a potentially "devastating" problem for the holocaust victim if, "for example, the theft were alleged to have occurred in Gemany" or France, because the statutes of limitations in those countries, Mr. Feldman is informed, would firmly bar claims filed more than 30 years after the date of theft.

Mr. Feldman's analysis goes astray by wrongly assuming that New York will "borrow" another jurisdiction's statutes of limitations whenever a non-resident of New York sues to recover a work that was stolen in the other jurisdiction. That is, to use the language of the borrowing statute. Mr. Feldman assumes that a claim to recover stolen art from a New York defendant "accrues" at the time and place of the theft. This is plainly not the law in New York when the art is found in the possession of a good faith purchaser, rather than the thief. Indeed, the central and dispositive teaching of *Lubell* is precisely that a claim to recover stolen art from a good faith purchaser does not accrue until the purchaser refuses the theft victim's demand to surrender the work.[3] It follows that, if the purchaser and the work of art (or perhaps merely either one) are within New York when the purchaser refuses the demand, the cause of action will be deemed to have accrued *within* New York, not in Germany or France or any other place "without the state" where the art might have been stolen in the first instance.[4]

I shall leave it to others to debate the merits of Mr. Feldman's ultimate aim, which is to garner support for a proposal to gut *Lubell* by replacing the "demand and refusal" rule with legislation that would bar any claim by an art theft victim who failed to report the theft to a centralized database within three years after the theft. Any reconsideration of New York's statute of limitations law should, however, begin with a correct understanding of how the law currently works. On that score, it is clear that New York's borrowing statute poses no serious threat to claims to recover stolen art from New York defendants under the existing regime and, thus, supplies no basis for encouraging holocaust or other art theft victims to rally round Mr. Feldman's legislative proposals.

Thomas E. Starnes
The writer is an attorney with Andrews & Kurth L.L.P.

[1] *Solomon R. Guggenheim Found. V. Lubell*, 569 N.E.2d 426 (N.Y. 1991).

[2] N.Y.C.P.L.R. 202.

[3] *Lubell*, 569 N.E.2d at 429-31.

[4] Of course, a New York court might apply the law of some other country to other issues in the hypothetical case. For example, if the work had been "sold" in Switzerland after it was stolen, a New York court (or any other court) might consider applying a Swiss rule of law that, in contrast to the American rule, allows a good faith purchaser to acquire title to stolen property in certain circumstances. *See, e.g., Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 717 F. Supp. 1374 (S.D. Ind. 1989), *aff'd*, 917 F.2d 278 (7th Cir. 1990) (in which an Indiana dealer failed to persuade the court that she acquired good title to mosaics stolen from a church in Cyprus by virtue of having purchased the mosaics in a Swiss airport). Determining whether to apply Swiss law on that point, however, would have nothing to do with New York's "borrowing statute," but would instead depend upon the application of conflict of laws principles.

AUTHOR'S RESPONSE

Mr. Starnes writes that my "analysis" of New York's "borrowing statute" as applied in the recent New York Court of Appeals decision,[1] is a "reckless invention" as part of a campaign to convince the New York State legislature to adopt rules that will make it easier for New York dealers and collectors to "defeat the claims of holocaust and other art theft victims..." I submit that Mr. Starnes did not understand my article, the holding of the recent New York case, or the New York "borrowing statute." (Section 202 of the New York Civil Practice Law and Rules).

The borrowing statute applies when a non-New York resident sues based on a cause of action arising outside the state. In support of his argument, Mr. Starnes cites *Solomon R. Guggenheim Foundation v. Lubell*,[2] decided by the New York Court of Appeals in 1991. That case confirmed the "demand and refusal" rule as the test in New York for the time period to institute a suit for the recovery of stolen art. But that case involved a suit by a New York resident – not a non-resident – with respect to a theft in New York, and therefore the borrowing statute is not relevant or applicable. Indeed, the Court of Appeals in the *Lubell* case expressly stated: "Only where the cause of action accrues in favor of a New York resident is this rule rendered inapplicable." As I believe I made clear in my article, I am concerned about suits by non-residents to assert claims in New York where the theft occurred in a foreign jurisdiction, such as Germany and France, or even in a state other than New York which does not have the "demand and refusal" rule. That is where the "borrowing statute" bites.

Mr. Starnes further states that my article "goes astray" by wrongly assuming that New York will borrow another jurisdiction's statute of limitations whenever a non-resident of New York sues to recover a work that was stolen in the other jurisdiction. That is clearly what the "borrowing statute" says and the Court of Appeals so indicated. Although Mr. Starnes suggests in his footnote that a New York court "might apply the law of some other country to other issues in the hypothetical case," he is clearly unaware of the English case of *Winkworth v. Christie, Manson & Woods, Ltd.*,[3] which is relevant. In that case, a theft of artwork occurred in England, and the work was subsequently transferred to Italy where it was sold to an Italian good faith purchaser. The Italian purchaser then brought the work to England where it was to be auctioned by Christie's. The conflict was then between the English victim and the Italian good faith purchaser. The English Court, also applying common law, held that under the relevant conflict of law rule, Italian law applied and the English victim was denied his art. Although that case involved the conflict between civil law (good faith purchaser receives good title) as against common law (a thief cannot pass good title), it should be evident that (1) the "borrowing statute" expressly requires that you look to foreign law (on the issue of statute of limitations) and (2) if a common law court will look to foreign substantive law (civil law) where a theft has occurred, it is most likely to look to the foreign statute of limitations where the New York "borrowing statute" directs it to do so.

My purpose in writing the article which Mr. Starnes attacks was not to help dealers and collectors retain stolen art, but on the contrary, to point out that the "borrowing statute" might prevent victims from recovering their stolen work and the art public should be alerted to the relevant law. I further suggested that to insure that victims were not hurt by the "borrowing statute" an amendment to existing law with respect to stolen art might be appropriate. Indeed rather than my analysis being "reckless," it would seem to me that to ignore the possible impact of the current state of New York law with respect to the applicability of the "borrowing statute" is itself reckless. And certainly so, when an objection is made to the suggestion of a clarifying change which would clearly remedy any potential and unforeseen trouble.

Franklin Feldman

Current Legal Issues in the Art Market

To the Editor:
Last April I was privileged to participate in a panel discussion "Current Legal Issues in the Art Market: Stolen Art and Cultural Property," sponsored by the Association of the Bar of the City of New York and reported on in the last issue of *IFAR Journal*. I write to clarify the impression given in this report of my position concerning the "Steinhardt case" that was the subject of discussion by the first panel. The Federal District Court held that the forfeiture of the "Steinhardt" phiale was valid both because the customs forms used for the importation of the phiale had misrepresentations as to its country of

[1] Insurance Company of North America v. ABB Power Generation, inc., 91 N.Y 2d (1997).

[2] 569 N.E.2d 426 (N.Y. 1991)

[3] {1980} 1 ch. 497.

origin and value and because the phiale was stolen property. I introduced my remarks during the panel discussion by noting that I would address only the latter point.

As a participant in the preparation of the *amicus curiae* brief submitted to the Second Circuit in the Steinhardt appeal on behalf of the Archaeological Institute of America (and joined by several other archaeological, historical and conservation organizations), I focused much of my attention on the question of whether the United States should consider as "stolen" objects of antiquity that are subject to a law vesting ownership of such objects in the national government and that are subsequently removed without permission of that nation. The *IFAR Journal* report of the panel presentations unfortunately mistook my statement that my remarks would concern the ownership issue as an indication that I was "concerned with" or, in other words, "troubled by," the District Court's holding on the question of recognition of foreign governments' declarations of ownership of antiquities. As the rest of my remarks made clear, however, I approve the holding and the reasoning of the District Court's opinion in the Steinhardt decision on the subject of national ownership declarations of antiquities.

Patty Gerstenblith
DePaul University College of Law

IFAR EVENING

Thursday, November 19, 1998
6:00–8:00 p.m

True or False: Authenticating Egon Schiele

Jane Kallir
Co-Director, Galerie Saint Etienne
Author, *Egon Schiele: The Complete Works,* 2nd Ed.

Reservations Required.
Please Call IFAR for Information.

Hold the Date: Next IFAR Evening, December 14

AMICABLE SETTLEMENT IN DISPUTE OVER DEGAS MONOTYPE PASTEL

Chicago

A dispute that IFAR first reported on in *IFARreports* November 1996 regarding Degas's 1890 *Landscape with Smokestacks* (cover photo) was resolved amicably in August, only weeks before it was scheduled to go before a Federal court jury. The work was owned by pharmaceuticals magnate, Daniel Searle, and claimed by the heirs to holocaust victims, Louise and Friedrich Gutmann. The Solomon-like agreement called for Mr. Searle to cede half ownership of the artwork to the Gutmann heirs and donate his half to The Art Institute of Chicago, on whose Board Mr. Searle sits. The museum, in turn, would purchase the Gutmann family half-ownership based upon the average value as determined by two independent appraisers. The acquisition acknowledgment would honor both parties: "Purchase from the collection of Friedrich and Louise Gutmann and a gift of Daniel C. Searle." The work will be on view starting October 1998, but like all works on paper, it will be rotated out-of-view occasionally, in accordance with general museum conservation standards.

The disputed work is one of several landscapes executed by Degas in the 1890s in a printmaking technique called monotype, enhanced by pastel. The artist is known for his experimentation with this hybrid medium, which called for applying black or colored paint or ink to a glass, zinc or copper plate and then pressing the image onto a damp sheet of paper, which he then enhanced with pastel. He often experimented with a variety of textural effects in the colored areas.

Edgar Degas (French, 1834–1917). *Landscape with Smokestacks*, 1890.

The two-year dispute, reputed to be extremely costly for Mr. Searle (upwards of one million dollars), revolved around several key issues: Was this pastel the same work that was owned by the plaintiff's family and sent to Paris during the war for safekeeping? Had it in fact been sent to Paris not for safekeeping but for sale, as Mr. Searle suggested? Had the Guttmann heirs waited too long to bring their suit, especially considering that the Degas in question had been publicly exhibited on several occasions since Mr. Searle purchased it (for $850,000) in 1987? Should Mr. Searle – or the curators at The Art Institute of Chicago who researched the landscape's provenance for Mr. Searle before he purchased the work – have known or been able to know that there was an old claim on it or that there was a suspicious name in the provenance history? All these issues were made moot with the compromise settlement.

Sharon Flescher

IFAR PARTICIPATES IN A STATE DEPARTMENT ROUNDTABLE ON HOLOCAUST ERA ASSETS

Washington, D.C.

On June 9, IFAR participated in a Roundtable Discussion on Nazi-looted art co-hosted by the U.S. Department of State and the U.S. Holocaust Memorial Museum. The Roundtable, which brought together about two dozen of the most prominent organizations, scholars, government officials and attorneys involved in this important subject, was one of several events being organized to help the U.S. government prepare for a major international Washington Conference on Holocaust Era Assets that will take place at the State Department from November 30 to December 3, 1998. The November Conference will build upon the work of the 1997 London Conference on Nazi Gold, but will expand the discussion to include other assets, notably art and insurance.

The June 9th Roundtable was convened to help determine: the current gaps in historical and archival knowledge; the legal, moral, and policy issues relating to art restitution; and the possibility of establishing guiding principles and processes for art claims. An underlying Roundtable objective was to determine

whether there is a consensus as to what the United States position should be at the November Conference. Under Secretary of State Stuart Eizenstat addressed the Roundtable participants and underscored their importance to the process.

On June 30, the State Department hosted an Organizing Seminar in Washington as another prelude to the November Conference. Thirty-eight countries sent representatives.

According to Mr. Eizenstat, the November Washington Conference is not intended to be a forum for governmental decision-making, nor will it be "binding." Rather it is intended to "shape principles and processes for redressing injustices." It is hoped that "such consensus can give new impetus to the encouraging initiatives already underway in many countries. . ."

IFAR will keep its readers informed on this issue and the outcome of the November Conference.

SF

GERMANY WINS ANOTHER COURT BATTLE FOR AN ART WORK LOOTED IN WORLD WAR II

London

More than 50 years after it was taken from Germany by the Red Army at the end of World War II, a small masterpiece by the Dutch mannerist artist, Joachim Wtewael (pronounced Ootval), was declared by the High Court of London in September to be the property of Germany and ordered returned. The ruling has important implications for the international art market in London.

Joachim Wtewael (Dutch, 1566–1638). *Holy Family with Saints John and Elizabeth and Angels*, 1603.

The painting, a *Holy Family with Saints John and Elizabeth and Angels* dated 1603, is a small work on copper measuring 8" x 6". In an interview with IFAR, Dr. Anne Lowenthal, the world authority on Wtewael, noted that the work is "a fine example of a type of art that was highly prized in Wtewael's time and is still much admired today: small mythological or religious images painted on copper. It was painted in Wtewael's early maturity and is full of his characteristic extravagance."

The story of the work's theft and reappearance reads like a cold-war mystery novel, replete with diplomatic smuggling, KGB operatives, alleged witness tampering, and a Panamanian-registered company, Cobert Finance.

The painting was put up for sale by Cobert at Sotheby's London in April 1992, but was withdrawn when questions were raised about its true ownership. It remained for safekeeping at Sotheby's pending resolution of the court case, which pitted the government of the Federal Republic of Germany against Cobert. The pre-War provenance of the painting was not in doubt; it was owned by the dukes of Saxe-Coburg-Gotha (in East Germany) from 1826, and was later moved to a municipal foundation. Like many other German treasures, it was stored for safe-keeping during the War, at which time it disappeared. Its precise whereabouts during the subsequent years are unclear, but it passed through many hands, including, according to the German government, those of "Big Mamma," the nickname of the wife of an Ambassador from Togo to the Soviet Union, who smuggled the work to Berlin. It was eventually acquired by Cobert, which put it up for auction. At the trial, Cobert changed its initial story and admitted that it had not acquired the art work appropriately, but argued that, whatever the ownership history, Germany's claim had expired even based on its own 30-year statute of limitations. Nonetheless, the judge ruled that the thieves should not be able to prosper "however long the period which has elapsed since the original theft." It would be against public policy, he noted, "to permit a party which admits it has not acted in good faith to retain the advantage of lapse of time." Had the judge ruled in favor of Cobert, it might have cleared the way for looted World War II era art to be sold openly on the market in London.

SF

NICOLAI COPERNICI
ner, in quo terram cum orbe lunari tanquam epicyclo contineri diximus. Quinto loco Venus nono mense reducitur. Sextum denique locum Mercurius tenet, octuaginta dierum spacio circũ currens. In medio uero omnium residet Sol. Quis enim in hoc
pulcherimo templo lampadem hanc in alio uel meliori loco ponere, quàm unde totum simul possit illuminare? Siquidem non inepte quidam lucernam mundi, alij mentem, alij rectorem uocant. Trimegistus uisibilem Deum, Sophocles Electra intuentẽ omnia. Ita profecto tanquam in solio regali Sol residens circum agentem gubernat Astrorum familiam. Tellus quoq; minime fraudatur lunari ministerio, sed ut Aristoteles de animalibus ait, maximã Luna cũ terra cognationẽ habet. Concipit interea à Sole terra, & impregnatur annuo partu. Inuenimus igitur sub hac

Heliocentric page from the first edition (in Leipzig) of Copernicus' *On the Revolution of the Heavenly Spheres.*

RARE COPERNICUS BOOK STOLEN IN KIEV

Kiev

A rare first-edition of one of the most important books in intellectual history, *On the Revolution of the Heavenly Spheres,* by Polish astronomer, Nicolaus Copernicus, was stolen from the library in Kiev, Ukraine, in August. This technical treatise, published when Copernicus was on his deathbed and expounding his heliocentric theory of the universe, contains 400 pages, including approximately 100 woodcuts with technical diagrams. Owen Gingerich, Professor of Astronomy and History of Science at the Harvard-Smithsonian Center for Astrophysics, told IFAR that approximately 400–500 copies of the first edition of the treatise were printed in 1543. A second edition of approximately 500 copies appeared in 1566. Professor Gingerich has spent the last 30 years documenting all the known extant copies of the Copernicus, so that, in theory, this is a particularly "bad" book to steal. Individual copies of the book are identifiable because, according to Gingerich, they were originally unbound, and each owner had them bound to his taste. Owners also put notes in the margins. The stolen copy from Kiev is unique because of the "handwritten provenances on the title page." It also "has an interesting 16th century binding, which increases its value." Because this treatise was considered important from the very beginning, there are a particularly high number of copies still extant. Gingerich has documented 250 of the first edition, including the one in Kiev. Copies of the books sell for approximately $200,000, and are sold by only about a dozen book dealers in the world. According to Gingerich, most of these dealers know to consult with him before buying or selling a copy. Two of the three copies of the second edition that have come on the market in the last two years, says Gingerich, were stolen.

The copy in Kiev was taken by a researcher who was studying in the library with what turned out to be false identification papers from a scientific institution. While using the book, he left the library ostensibly to "take a smoke." He apparently took the book with him and didn't return. Because he was only temporarily stepping out, he had not been asked to return all his materials at that time. The book was discovered missing at the end of the day.

SF

ITALIAN COURTS RESOLVE COMPLICATED 30-YEAR DISPUTE OVER ART AND PROPERTY

Venice

In May, the Venice Court of Appeals wrote the final chapter to a story involving a Tiepolo fresco cycle and two battling noble families, with its ruling defining the relationship between a palazzo, its art and its owners.

As reported in the May 30, 1998 edition of the Venice newspaper *Il Gazzettino,* this is the sequence of events:

In 1955 Contessa Maria Angela Toso Lucheschi with the permission of the Superintendency of Fine Arts, removes a cycle of frescoes by Giambattista Tiepolo from the walls of the piano nobile (main floor) of her Venetian palazzo on the Grand Canal – ostensibly to restore them. Her palazzo is Palazzo Barbarigo, and the fresco cycle includes Allegories of Poetry, Music, Painting and Sculpture –

The Palazzo Barbarigo in Venice. *Photo courtesy of Archivio Fotografico Arsenale Editrice, Venice.*

popular subjects for the decoration of Venetian palaces. A bill of payment dates the cycle between 1744 and 1745.

The permission of the Superintendency is necessary because according to Italian law, the presence of the Tiepolo cycle places the palazzo under its jurisdiction, limiting her ownership and forbidding her to sell or dispose of it or the frescoes without its permission. The law decrees that the palazzo is "vincolato" (bound).

Undaunted by the legal limitations placed upon her, the Contessa then sells for ten million lire ($5,880) the main floor of the palazzo to Luigi Franchin with the frescoes missing from its walls.

A few years later, she sells the frescoes, today valued at approximately a billion lire ($588,235), to Augusto Conti, a Milanese collector, for 17 million lire ($10,000).

The separate sales of the frescoes and the main floor of the palazzo come to the attention of the Superintendent, who disapproves and initiates a lawsuit that drags on for more than thirty years.

In 1985 a judge annulls the agreement of the sale of the frescoes and says that they must be returned to their places on the walls of the palazzo on the floor that had been sold to Luigi Franchin.

In 1995 although the frescoes are not yet back in place, the Contessa's heirs sue the unsuspecting widow of Luigi Franchin and her daughters, asking 900 million lire ($529,411) for the enrichment that will occur to them when the frescoes are returned.

In 1997 the Court of Venice sides with the Contessa and decrees that although they had never formally acquired the frescoes, the Franchins must pay the Contessa's heirs the lesser amount of the value of the Tiepolos or the increased value of the palazzo after the frescoes are returned. The Court of Venice judge defers to another judge the determination of that amount.

Happily for the Franchins, in May 1998 the Court of Appeals overturned the lower court decision by deciding that the bond of the Palazzo Barbarigo (the "vincolo") ties building and frescoes together and that a "judicial inseparability" exists. From that it follows that the parts are indivisible from the whole, meaning that the frescoes were "automatically transferred" with the palazzo. It is of little importance that at the moment of sale the frescoes were not there "since the material factor of the separation did not make the tie less binding."

The frescoes will return to their places, Venice's artistic patrimony will be preserved, and the heirs of the Contessa are left empty handed.

Clara Graziani Bronson

THEFT OF COROT PAINTING CAUSES EXHIBITION POSTPONEMENTS IN THE LOUVRE IN PARIS

Paris

In the aftermath of the brazen theft of an oil painting, *Le Chemin de Sèvres* by Camille Corot, from the Louvre in May (see the Stolen Art Alert in this issue of *IFAR Journal*), the museum has announced a major overhaul of its security measures and has postponed three out of four temporary exhibitions planned for this year.

The painting was removed from its frame and glass on a crowded Sunday afternoon while the Louvre was open to the public. When the theft was discovered, the police temporarily closed the museum and searched thousands of visitors, but to no avail. The museum immediately announced new security measures including a thorough evaluation of the weaknesses in existing security, the temporary closing of galleries considered particularly vulnerable, and the hiring of additional museum guards. In addition, the following three exhibitions originally scheduled for the period between August 1998 and April 1999 were postponed: *Bronzes of the Crown; Archaeological Digs and The Tomb of Ramses II;* and the *Essence of Architecture.*

SF

A *Virgin of Sorrows* by Il Sassoferrato

Figure 1. Il Sassoferrato: *Virgin of Sorrows*. Oil on canvas. 29" x 24". Presented to the Authentication Service at IFAR. Private collection, Dallas, Texas.

An oil painting depicting the *Virgin of Sorrows* (Fig. 1) was recently submitted to IFAR's Art Authentication Service by a collector in Dallas, Texas, to determine whether it might have been painted by Giovanni Battista Salvi, known as Il Sassoferrato (b. Sassoferrato, 1609–d. Rome, 1685). As with many Old Masters, scant documentation and the nature of Il Sassoferrato's own practice make definitive attributions difficult. Nonetheless, we are pleased to report that the picture can indeed be attributed to Il Sassoferrato with relative certainty.

Il Sassoferrato worked in Naples, Urbino, and Perugia before spending the majority of his career in Rome. In the 1640s and 1650s he was sought after as a portraitist, especially by ecclesiastical patrons. His legacy, however, is formed by his numerous representations of the Virgin bearing a sweet and solemn facial expression. These images tend to be rather unadorned and archaic in their composition and disposition, reflecting a type of classicism that was based on an appreciation for the work of Raphael (1483–1520). The vogue for these compositions spurred Il Sassoferrato to repeat them, often undoubtedly with the assistance of his studio. Additionally, the popularity of his images after his death fostered the production of innumerable copies of his works for churches and individuals throughout Italy and abroad.

The painting presented to IFAR depicts the Virgin Mary in half-length (the photograph reproduced as Figure 1 is slightly cropped at the top and bottom). Her hands, lightly clasped in prayer, are visible at the base of the composition. She leans to her left and tilts her head in the same direction, imparting a peaceful serenity. Her garments fall in gentle folds, the head coverings cast a shadow across her forehead and right cheek, and tears descend from both eyes. A golden radiance encompasses her head. All of the pictorial elements are designed to present a tranquil devotional image.

The painting is in good but not optimal condition. A physical examination showed that a layer of dirt and yellowed varnish obscures the true tonal range of the painting and that the surface suffers from a slight bubbling in the background near the Virgin's head.

The iconographic type of the Virgin of Sorrows, also known as the *Mater Dolorosa* or, in Spain, *La Soledad*, the Virgin of Solitude, was popular from the sixteenth century. The representation of an isolated Virgin grew out of narrative scenes which showed her mourning beside the Cross or with the dead Christ in her lap (also

known as a *Pietá*). The Virgin of Sorrows came to personify the Church left alone to carry the burdens of the world after the departure of the disciples. The theme was especially attractive in the late-sixteenth and seventeenth centuries during the Counter-Reformation for its candid emotional content, clear symbolic character, and the simple piety which it engendered.

The boundaries of Il Sassoferrato's *oeuvre* remain quite difficult to define. No complete *catalogue raisonné* exists. The most comprehensive study of his work is the 1990 exhibition catalogue from Sassoferrato, a town in Ancona, Italy.[1] This exhibition and its accompanying catalogue were principally organized by François Macé de Lépinay, an expert on Il Sassoferrato who was formerly a conservator of paintings at the Musée Carnavalet in Paris.

In conversations and correspondence with IFAR, Macé de Lépinay detailed many of the difficulties involved with authenticating Il Sassoferrato's work. The artist signed only one painting, and there are few securely documented commissions. Therefore scholars have few foundations with which to establish a set of unequivocal attributions or a chronology. According to Macé de Lépinay, "One gives credence to those works which have a secure history." Commissioned works such as portraits and altarpieces allow one "to make pronouncements (about authorship) with only a small margin of error."

It is unlikely that the *Virgin of Sorrows* under examination was commissioned, however. Rather, the popularity of these "images of piety" caused the artist to repeat them numerous times. The *Virgin of Sorrows* composition is known in many other versions. Il Sassoferrato is generally accepted as the inventor of this composition even though a number of the paintings are probably copies by other artists.[2] On the basis of photographs submitted by the owner, Macé de Lépinay stated that the version submitted to IFAR ranks with the examples in the Ashmolean Museum, Oxford, the Uffizi in Florence, and the Collection of the Fürsten von Liechtenstein in Vienna as equally fine in quality. For these attributions where little documentation accompanies the work, Macé de Lépinay emphasized, "the sole criterion of judgment is the pictorial quality." He called the painting under examination "beautiful, very well painted, very fine in its color..." He concluded, "[The IFAR version] is one of great quality and may be considered as one of the original versions of this celebrated composition."

It is impossible to know, however, Macé de Lépinay cautioned, which of the numerous versions of this composition was "*the* original" or "*the* singular model" for the others which followed.

The painting submitted to IFAR carries only a recent provenance. Only one of the Virgins attributed to Il Sassoferrato, a *Mater Dolorosa* in the Pinacoteca Comunale of Cesena, Italy, can boast a provenance back to the seventeenth century. The Cesena piece was reputedly deposited in the Monastery of Santa Maria del Monte in Cesena by a Father Modesto Vendimini of Cesena in 1686, the year after Il Sassoferrato died.[3] The Cesena *Mater Dolorosa* is one of six paintings attributed to Il Sassoferrato now in the Pinacoteca Comunale which share the same history. Because of their provenance, all six of these paintings are accepted as authentic works by the master.

The date of the *Virgin of Sorrows* under examination is uncertain due to the lack of documentation and, as noted above, the repetitious nature of Il Sassoferrato's *oeuvre*. Moreover, the immutable character of the artist's style over several decades complicates an assessment of his chronological development. The painting may have been produced anywhere from the 1640's, when Il Sassoferrato achieved his mature style, until his death in 1685. Francis Russell recognized the problem of dating in a review of the 1990 Sassoferrato exhibition where the seventy or so paintings were organized according to their present location, rather than their chronological progression. "Inevitably it is to the Madonnas that one returns," Russell mused, "marvelling at their very consistency."[4]

[1] François Macé de Lépinay, *Giovan Battista Salvi: "Il Sassoferrato,"* ex. cat. Sassoferrato, San Francesco, S. Troiani, ed. (Milan: Amilcare Pizzi, 1990).

[2] ibid., especially pp. 62 and 100. Three versions of this composition were displayed in the 1990 exhibition: from Cesena, cat. no. 14; from Pesaro, cat. no. 39; and from the monastery of Santa Chiara in Sassoferrato, cat. no. 63. Other known versions of this composition are located in the Ashmolean Museum, Oxford, the Uffizi in Florence, the Sammlungen des regierenden Fürsten von Liechtenstein in Vienna, the Harrach Gallery in Vienna, the Museum in Nancy, France, the Galleria Palavicini in the Palazzo Rospigliosi in Rome, and in the Episcopal Palace in Madrid (Macé de Lépinay, ibid., and correspondence with IFAR, 22 October 1997). Additionally, the photoarchive of the Frick Art Reference Library in New York includes other versions of the composition in the Iglesia Parroquial in La Fresneda, Spain (almost certainly a copy) and in the Palazzo Reale, Genoa.

[3] ibid., p. 62.

[4] Francis Russell, "Sassoferrato, S. Francesco: Giovanni Battista Salvi 'Il Sassoferrato' (exhibition review)" *The Burlington Magazine*, vol. 132 (November, 1990), pp. 808-9. Russell suggested that with the group of pictures apparently recorded at Cesena in 1686, "a certain placidity may imply a late date."

Certain areas of the *Virgin of Sorrows* are more satisfying than others in their execution. The soft manner of painting in the Virgin's face is consistent with other works securely attributed to Il Sassoferrato, but the hands seem more formulaic in technique. It is difficult to ascertain whether this discrepancy indicates partial studio assistance, or whether it is the result of a certain complacency on Il Sassoferrato's part in repeating this composition.

Despite the caution that is necessary in attributing works to Il Sassoferrato, IFAR feels confident in ascribing the *Virgin of Sorrows* to this artist. Many versions of this composition exist and the arrangement is widely recognized as Il Sassoferrato's invention. The stable organization of forms, sonorous colors, idealized physiognomy, and sincere devotional character all point to this master of Madonnas. The primary question is whether the version presented to IFAR's Art Authentication Service is by the master himself, by one of his assistants working under his aegis, or by a later copyist. In its handling of paint, tenderness of expression, and richness of color, this image compares favorably in quality with other versions of the same composition. Given that Il Sassoferrato consistently repeated compositions, it is likely that several versions of the *Mater Dolorosa* were indeed made by his hand. IFAR concurs with Macé de Lépinay that the *Virgin of Sorrows* is typical of Il Sassoferrato's best work and that the painting can be attributed to him with a high degree of assurance.

Paul Crenshaw
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"Fakes! Fakes! All total fakes! But I love every one of them!"

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Conservation in the Aid of Authentication: How a Painting "Signed" by Jozef Israëls Was Reattributed to J.S.H. Kever

Although conservators do not authenticate artwork, conservators and conservation scientists do provide the evidence and facts which are often used in the authentication process. Because of this, the Guidelines of Practice in the Code of Ethics of the American Institute for Conservation of Historic and Artistic Works read: "The conservation professional should be especially mindful of the considerable potential for conflict of interest in activities such as authentication, appraisal, or art dealing." The conservator often uses a painting's physical construction to help in the examination process. It can provide information about the mode, method and time of fabrication of the canvas, panel, stretcher, ground or paint layers. Any inconsistency in the physical structure can raise doubts about the authenticity of the painting and should be investigated.

Usually conservation analysis works in conjunction with connoisseurship and historical research and documentation to help determine the authenticity of a painting. These combined methodologies are utilized by IFAR's Art Authentication Service. Occasionally, however, conservation alone can be a determinative factor, and sometimes it is accomplished in the course of a normal conservation restoration project, where authentication was not the objective or even necessarily being questioned. The discussion below is one such case. Technical inconsistencies that were uncovered in the course of a normal conservation project, together with labels and marks found on the back of a painting raised suspicions that ultimately led to a reattribution of a work initially thought to be by Jozef Israëls.

The Dutch artist, Israëls (1824–1911), was a leader of the Dutch Hague School in the late nineteenth and early 20th century. He influenced many Dutch artists, including the young Vincent Van Gogh, and in some cases contemporary artists made copies of his work. He is represented in many major museums, such as the National Gallery, London, the Rijksmuseum, Amsterdam, and the Museum of Modern Art, The Hague.

The case described below involves an oil painting of a *Mother and Child in a Cradle* (generic title), 19¾" x 22½", which was signed in the lower left "Jozef Israëls." It was acquired at auction and was brought to me for conservation analysis the day of purchase. (Fig. 1) The client had paid a five figure amount, which is not unusual for a high quality Jozef Israëls painting. Within three hours of the start of the conservation examination however, serious doubts arose as to its attribution, The client was able to stop payment on the check, and the painting was returned immediately to the auction house. The situation

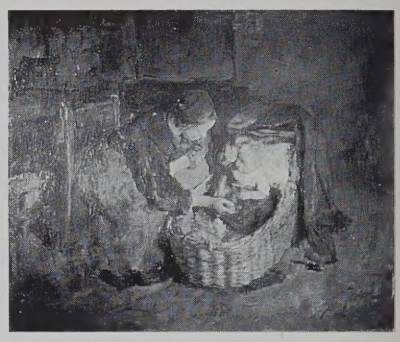

Figure 1. Painting as it arrived from the auction house.

was resolved without any legal fees, and no fault was acknowledged by either party. The present location of the painting is unknown to me and, hopefully, it is no longer being represented as a work by Israëls.

As a conservator my experience with Jozef Israëls' paintings was extensive, having worked on such masterpieces as *The Jeweller of Amsterdam*, *The Coffee Drinker*, and a second version of *A Son of the Ancient Race*. In this case, previous exposure to the artist's method of paint application and layering proved important. My initial reaction to the painting under examination was positive. It was quite lovely, depicting a woman tenderly leaning over a child in a cradle. The canvas was unlined and was attached to its original nineteenth-century stretcher, which contained two labels adhered to the stretcher crossbars. The weave of the canvas and the square-ended stretcher (also called a ship-lap stretcher) were typical of nineteenth-century paintings. However, ultraviolet fluorescence examination began to raise concerns. It revealed a slightly visible signature

I would like to thank Mr. Michael Landy and Mrs. Melissa DeMedeiros for their kind assistance, enthusiasm, and encouragement with this article.

Figure 2. First label, nineteenth century, Boussod, Valadon & Co. in stretcher crossbars.

and a thick multilayer varnish on the painting surface. Fluorescence is defined as the emission of visible light from an object when it is illuminated by ultraviolet light. This is important in conservation as areas of a painting which have been previously restored or overpainted appear purple-black under the ultraviolet or lack the typical yellow green fluorescence of oil or resin layers. Ultraviolet fluorescence records the varnish layers and anything that's been added on top of or within the varnish layers. Generally under thick multilayer varnishes, the signature is not visible at all. So the slight visibility of the signature under ultraviolet fluorescence in this case was problematic, although not in itself conclusive, since certain pigments do remain visible – appearing purple-black – under fluorescence. However, there were also other inconsistencies, and they were of more concern, namely: the structural inconsistency of the paint layers; the absence of the thick layering and reworking of the surface normally found in Jozef Israëls' work; and the weak painting manifested in the area of the mother's arm. Moreover the arm seemed to have been restored and curiously corresponded to a patch at the back of the canvas, and the heads of both figures, although well executed, lacked the typical red highlights and flesh tones that Israëls is noted for.

In writing the conservation report, I documented the labels and marks found on the back of the painting, since such historical context can be important. I noted a label fragment attached at the crossbars which read: "From /Goupil & Co./of Paris,/ … (B)oussod, Valadon & Co/Successors,/ …Publisher, Modern Paint…/ …(Fi)fth Avenue,/…cor. of 31st St./ New Y(ork)…"(see Fig. 2). Boussod, Valadon & Co. from Paris began operating in New York in the 1880's. Although a separate firm from Goupil Vibert & Co. of New York, which had been established in 1846 and later was renamed Knoedler & Co., both firms were related to the earlier Paris print and engraving gallery of Goupil & Co., although they were under different managements. The two New York firms would often buy or purchase artwork for inventory from each other, The Boussod, Valadon label fragment seemed to validate the late nineteenth-century date of the painting under examination. In addition to the "Goupil & Co." label, I noted a second label on the back. It was simply a number, "11362," most likely a stock or inventory number (see Fig. 3). Although it was not an official part of the conservation examination, I decided to trace these labels for insight into the painting's provenance.

Goupil & Co. of New York still exists today as M. Knoedler & Co. of New York, one of the oldest art galleries in

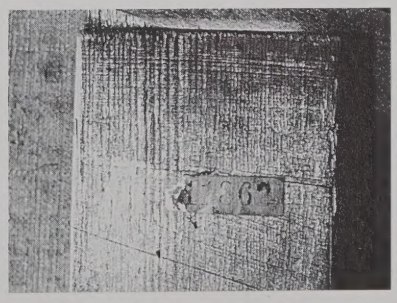

Figure 3. Second label, inventory number, on stretcher crossbars.

Figure 4. File photograph from Knoedler Gallery.

the United States and the first in the nineteenth century to offer free viewing of artworks to the general public. In 1995, the gallery celebrated its 150th anniversary. The archivist of M. Knoedler was able to confirm that the number 11362 was indeed a Knoedler inventory number and that a painting fitting the description of the one under conservation analysis and entitled *In the Cradle* was purchased by Knoedler at auction on March 15, 1907 at the American Art Galleries from the collection of Judge Samuel L. Bronson.[1] However, the Knoedler painting was not by Jozef Israëls but by another Dutch artist, Jakob Simon Hendrik Kever. The description in the 1907 catalogue is as follows:

"Height, 19 inches: Length, 22 inches/ A young mother, seated in a small rocking/ chair, leans over a wicker-work cradle in/ which a small infant is half reclining, half/ sitting. The mother is holding her right hand in front of the infant, half concealing in it some object which attracts the/ youthful curiosity. The light falls strongly/ upon the group from the front and brings/ out in vigorous contrasts of light and shade/ the figures of the mother, the child, and/ the different articles of domestic use in/ the room./ Signed at the lower left, Kever/"

[1] American Art Galleries. Auction Catalogue. ex-collection Judge Samuel L. Bronson, Lot #50. New York: 15 March 1907.

Figure 5. A. Preyer catalogue photograph.

The painting was subsequently sold by Knoedler in 1910 to C. L. Fleirmans, New York, as a work by J.S.H. Kever. Significantly, a file photograph existed (See Fig. 4) of the Knoedler painting that was sold to Fleirmans. In addition, Knoedler also had the catalogue showing an apparently different J.S.H. Kever work from an exhibition held in Amsterdam in 1901 at A. Preyer's Kunstzaal "Pictura." Catalogue entry #2, *Bij de Wieg*, illustrated in the catalogue, is similar but not identical to the painting under examination. (See Fig. 5)[2]

Although little known today, the artist Jakob Simon Hendrik Kever received some recognition in his lifetime. He was a student of P.R. Greive and studied at the Academy of Amsterdam.[3] He participated in the Bruxelles Exposition of 1910 and received medals in Munich in 1901 and 1905, and in Paris in 1889 and 1900. His influence and recognition, however, were not as great as Jozef Israëls'.

Examination of the Kever painting that was illustrated in the Preyer Kunstzaal catalogue revealed subtle variations from the Kever painting described (but not illustrated) in the American Art Galleries catalogue and bought by Knoedler, especially in the description of the background. The Preyer catalogue Kever painting shows a work signed "Kever" on the lower right, The American Art Galleries auction catalogue, however, notes that the signature is at lower left. There are also slight differences in the objects on the table in the background. These inconsistencies in the location of the signature and in the background objects suggested that there were two different versions of the painting by the artist J.S.H. Kever.

On the suspicion that the second version was, in fact, the Jozef Israëls painting that we were analyzing, we decided to do another laboratory test: namely a scan of the paint surface using infrared reflectography. Our hope was to reveal a second signature, in addition to the Jozef Israëls signature visible to the naked eye. Infrared reflectography is used to reveal inscriptions, signatures, and carbon-based materials. It works on a contrast and absorption and reflection basis. Infrared light – like a heat wave – passes *through* certain pigments to reveal line and drawings, particularly underdrawings or sketches with remarkable clarity. Infrared reflectography is often useful with carbon-based inscriptions, such as charcoal or bone black. The infrared reflectography scan of the painting surface, which is seen on a television-like monitor, revealed an inscription (signature?) on the lower left of the canvas, slightly above the present visible "Josef Israëls" signature. Although illegible, the first letter of the second (original) inscription lower left was clearly a "K." The inscription/signature seems to be painted. It is not visible to the naked eye, and is revealed only under infrared reflectography. Was this second inscription intentionally concealed? We could only presume, "yes."

It was now clear that the painting brought in for study as a Jozef Israëls was the Knoedler painting purchased at the American Art Galleries in 1907. At that time (in 1907), it was still visibly signed and purchased as a work by the artist J.S.H. Kever. Because of the variations in the image noted above, this painting was not the Peyer catalogue version of the painting. Significantly, the conservation examination also proved that the *visible* signature of the painting under study, "Jozef Israëls," is not the original signature, but was added later, after an original signature that appears to be that of the minor Dutch artist, J.S.H. Kever. At an unknown date after the Knoedler sale in 1910, someone apparently overpainted the area around the Kever signature and added the Jozef Israëls signature below it, presumably to benefit from the higher market value associated with Israëls work. None of this would have been discovered if it were not for the technological insight available through infrared reflectography and ultraviolet fluorescence, two tools used in a standard conservation analysis.

Alexander Katlan
The writer is a paintings conservator and the author of two books on ninteenth century American artists' materials.

[2] Preyer, A. *Catalagus Tentoonstelfing J.S.H. Kever.* Amsterdam: Kunstzaal Pictura, 1901.

[3] Bénézit, E. *Dictionaire critique et documentarie des peintres, sculpteurs, dessinateurs et graveurs,* tome cinquième. Paris: Librairie Gründ, 1976.

Additional Reading: Eisler, Max. *Josef Israëls.* Edited by Geoffrey Holme. London: The Studio Ltd., 1924; Rooses, Max, ed. *Dutch Painters of the Nineteenth Century with Biographical Notices.* Translated by F. Knowles. London: Marstan & Co. Ltd., 1898.

Native American Art and Antiquities: A Legal Primer for Collectors

Native American arts and antiquities capture the interest of many experienced and amateur collectors in the United States and abroad. At the same time, however, the international public sector, the United States included, is struggling to find a way to diminish exports of items of cultural importance and to retrieve important items that have left their source countries, in the hope that significant antiquities can ultimately reside in their regions of origin. The struggle between public outcry to preserve and repatriate culturally important items and private demand to own such items, creates a tense – and legally murky – environment within which the collector of antiquities must judge the validity of acquiring or selling Native American arts and antiquities. Discussed below is a brief overview of certain United States legislation governing the acquisition, possession and sale of Native American arts and antiquities. By realizing that such legislation exists, and by acquainting oneself with the basic elements of such legislation, a collector will be better able to make informed decisions about such items and about those who deal in them.

A tripartite struggle exists in the Native American antiquities market: public preservation vs. cultural autonomy vs. private possession. Early legislation in the United States focused on preserving items of Native American cultural heritage. Such items generally were required to be housed in museums or universities, to enable scholars and the public to study and learn from them. The goal was preservation for the national "best interest," at times at the expense of private interests and tribal autonomy. Later statutes, however, focused more on the interests of the tribes and descendents claiming rights in Native American objects. This shift, naturally, impacted on the right of outside parties to trade in many Native American items. Private collectors of certain Native American artifacts may now be in jeopardy of violating U.S. law by selling such artifacts, due to the "illegal trafficking" provisions of the Native American Graves Protection and Repatriation Act. Owners of certain contemporary Native American works may be faced with greatly diminished market values for such works due to the "certification" restrictions imposed by the Indian Arts and Crafts Act. Discussed below are those statutes, as well as brief comments on other legislation that should be of interest to the collector of, or dealer in, Native American art and antiquities.

ANTIQUITIES ACT.[1] In 1906, the United States Congress passed the Antiquities Act, which attempted to deter the plunder of historic U.S. sites by establishing a screening process to limit and control access to sites on federal lands and to require that recovered antiquities be housed in museums or universities. While it was hoped that the Act would reduce the loss of important artifacts to private collectors, the Act is not considered to have accomplished its goals in a meaningful fashion. Lack of funding and minimal penalties simply did not deter those in the business of dealing in such goods. In the 1970s, the Act was successfully challenged as being unconstitutionally vague because it failed to identify items of "antiquity" in sufficient detail to permit proper enforcement.[2]

ARCHAEOLOGICAL RESOURCES PROTECTION ACT.[3] In 1979, Congress passed the Archaeological Resources Protection Act ("ARPA") to identify, more precisely than the Antiquities Act, items of cultural significance that should be protected. It also established a structure to oversee excavation of such items. ARPA defines "archaeological resources" to be items more than 100 years old that constitute "material remains of past human life or activities which are of archaeological significance."

Under ARPA, an "archaeological resource" may be removed from federal lands only pursuant to a government permit. If the item is located on tribal land, it may be removed only pursuant to a government permit and consent of the tribe. Items so removed remain the property of the landowner – that is to say, the federal government or the tribe, as the case may be – and they must be housed in a museum or university. Items qualifying as "archaeological resources," if removed from public or tribal lands after ARPA went into effect, cannot legally be sold in the private market except to qualifying institutions, such

[1] Antiquities Act of 1906, 16 U.S.C. § 431 – 433.

[2] *United States v. Diaz*, 499 F.2d 113 (9th Cir. 1974).

[3] Archaeological Resources Protection Act of 1979, 16 U.S.C. § 470aa – 470ll.

as publicly funded universities or museums. As with the Antiquities Act, this act was designed to support the institutionalization of items rather than their transfer in the private marketplace.

NATIONAL MUSEUM OF THE AMERICAN INDIAN ACT.[4] In 1989, Congress established a branch of the Smithsonian Institution to serve as a museum charged with preparing an inventory of Native American remains and, if identifiable with specific tribes, to return such remains to the tribes. This act served as a precursor to NAGPRA (discussed below), in obligating institutions to return items collected by them over many years.

NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT.[5] With the enactment of the Native American Graves Protection and Repatriation Act of 1990 ("NAGPRA"), Congress shifted its focus from efforts to preserve antiquities in museums and universities, to require instead that certain items be returned to their places of origin. Federally funded museums and universities, the repositories of many culturally important items due in significant measure to the government's earlier encouragement (and requirements), were commanded under this new act to prepare inventories of covered items and to repatriate the items. "Repatriation" refers to the return of an item to its place of origin or to the original possessors of the item. The concept of repatriation is the current international trend. Under NAGPRA, the following items are subject to repatriation and, as discussed later, restrictions on sale or transfer:

Native American human remains; Funerary objects:
These are objects that are believed to have been buried with human remains as part of a death rite or ceremony, which can be identified as being related to a specific family or individual or as having been removed from a specific site.

Sacred objects:
These are objects that were part of traditional Native American religious practices, and that remain necessary for use by present-day adherents to such practices.

Cultural patrimony:
These are objects considered to have ongoing historical, traditional or cultural importance to a Native American group or culture as a whole. Such objects were owned by the entire group or culture and were not transferable by any individual.

All publicly funded museums and universities are mandated by NAGPRA to prepare an inventory of such objects, and to return the items to the appropriate descendants or tribes. However, claimants must establish an appropriate tribal affiliation before a museum is obligated to release the claimed objects. Instead of requiring a wholesale emptying of museum vaults, NAGPRA will allow museums to retain objects that are not properly claimed.

As one can imagine, these inventory and divestiture mandates can place a significant burden on the institutions charged with such tasks. Compliance can cost significant time and money, both of which are in short supply at many institutions. Concern over the impact of the mandates on the museum community caused much debate and some delay in the passage of NAGPRA into law. The debate has been strong even within the museum community, regarding the practical and proper ways in which the issue of repatriation should be handled.

"Illegal trafficking." Section 4 of NAGPRA restricts the purchase or "transfer for profit" of a covered object by anyone without a "right of possession." In order to gain a right of possession, the possessor must have permission from the descendant or tribe with which the object is associated. As one can imagine, most Native American antiquities traded on the domestic and international art markets are not accompanied by evidence of tribal or descendants' "permission." Penalties for illegally trafficking in protected objects could include civil fines and criminal sanctions. The ability of current owners of Native American antiquities to sell the antiquities legally is unclear at best, if the items might fall within any of NAGPRA's enumerated categories. Due to the lack of documented provenance for many Native American objects circulating in the antiquities trade, and the corresponding difficulty of determining whether an object was excavated illegally, a collector or dealer should be mindful of the possible impact of NAGPRA on trading in such items.

Some involved in collecting artifacts have expressed serious concern that the imposition of heavy restrictions on those dealing in good faith with antiquities will encourage a soaring black market trade and drive important cultural items underground.[6] As a result, objects likely would move through private hands without an accurate record of provenance, without proper preservation, without public exhibition opportunities, and without the opportunity for scientific and historical research. The world is already painfully aware of the extensive damage suffered by historical sites due to destructive looting. Unauthorized excavation of sites denies scholars the ability to observe items *in situ* and to develop an understanding of their purpose and impor-

[4] National Museum of the American Indian Act, 20 U.S.C. § 80q – 80 q-15.

[5] Native American Graves Protection and Repatriation Act of 1990, 27 U.S.C. § 3001 et seq.

tance in the larger cultural environment. The historical record of such antiquities and their anthropological contexts is jeopardized, as well, for the rest of us. It is worth considering whether a wholesale moratorium on trade in illegally excavated items is an effective tool to combat such excavation, or whether such a proscription might encourage improper activity. Nonetheless, prohibitions and restrictions on purchasing and selling many Native American antiquities do exist, and they make it very difficult for legitimate traders in such objects to ensure that their dealings do not violate U.S. law. No centralized database currently exists to document and track objects of this type. A system such as the Art Loss Register, which maintains a large database of stolen fine art and antiques, could be of tremendous value to those involved with Native American antiquities. Without a central system available to track the provenance of such objects, it will remain difficult to verify whether many objects can pass legitimately in the marketplace.

INDIAN ARTS AND CRAFTS ACT.[7] In 1935, Congress enacted legislation to promote the development of a legitimate market for Native American arts and crafts. In 1990, the Indian Arts and Crafts Act (the "IACA") was amended. The thrust of the act is to permit "certification" of a newly-created work as an *authentic* Native American work only if such work is created by a member of a federally recognized Native American tribe. The tribes themselves are given the power to determine membership. One might ask whether the determinative factor for authenticity, from a collector's standpoint, should be whether the *work* is made by traditional methods and with traditional materials, or whether the *creator* is a member of a tribe at issue. The statute relies on the membership status of the creator, not on the quality or historical purity of the underlying work. The federal government, understandably, avoided imposing its own determinations as to tribal validity and membership. Rather than making those decisions itself, it defers to the decisions of the tribes at issue.

Some Native American artists and artisans have challenged the act as being unfairly restrictive on their livelihoods, by denying them the right to market their works as "authentic" Native American works. For example, an individual, while being entirely of Native American ancestry, may not be a recognized member of either of his parents' tribes. If he practices an art handed down to him through generations, and creates a work fully consistent with the traditions of such art, he will, nonetheless, be forbidden from labeling his work as an "authentic" work of either tribe. Conversely, a recognized member of a tribe may create a work that has no association with tribal tradition, but he, nonetheless, may sell his work as "authentic." While the legislation was aimed primarily at preventing the sale of fraudulent works imported into the United States and labeled as the authentic product of a particular tribe, it certainly may have unintended adverse effects on legitimate Native American artists and artisans. For a collector, it is important to remember that authenticity labeling under the IACA refers to the creator of the work, not to the work itself.

In conclusion, a collector of, or dealer in, Native American Arts or Antiquities should educate himself about the protective legislation that may impact on the legality of purchasing, selling or otherwise dealing in such items. While it may, from a practical point of view, be easy to trade in such items outside the jurisdiction of the United States courts, international agreements may nonetheless restrict or prohibit such activity. Further, the lack of appropriate provenance documentation can greatly reduce the value of such items in the legitimate markets. In this current age of repatriation, a collector would be wise to tread lightly in this arena. The Native Americans who have inhabited this country for centuries have left a cultural legacy treasured by existing tribes, by descendents of those who created such objects, by the museums and institutions dedicated to preserving and studying them, by the government charged with protecting the nation's cultural heritage, and by collectors and admirers throughout the world. The struggles among these parties will no doubt continue, and the legal controls over Native American arts and antiquities will develop and adjust over time. Those interested in collecting or otherwise dealing in such items would be wise to monitor the developing legal landscape in this area on a consistent basis to ensure that opportunities to deal in such items are lawful as well as enticing.

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[6] Fogelman, "The Law . . . And You . . . And Us," *Indian –Artifact Magazine* (Vol. 4, No. 2 1985).

[7] Indian Arts and Crafts Act of 1990, 25 U.S.C. § 305 – 305c.

Museums Adopt Holocaust-Era Art Restitution Guidelines

Editor's Note:
In June, the Association of Art Museum Directors (AAMD) adopted a broad set of guidelines for American museums to deal with works of art confiscated during World War II and not yet returned to their legitimate owners. Although the guidelines are not binding, they carry the force of the AAMD's 175 member museums in the United States, Canada, and Mexico. The Task Force that made the recommendations was chaired by Philippe de Montebello, Director of the Metropolitan Museum of Art. It included directors of two museums that have been much in the news regarding Holocaust-era restitution issues: The Seattle Art Museum and The Art Institute of Chicago (discussed elsewhere in this issue of IFAR JOURNAL).

After releasing the guidelines, Mr. de Montebello stated that by "adopting the report, America's museums place themselves on record as committed to acting swiftly and proactively to conduct the necessary research that will help us learn as much as possible about works for which full ownership records previously have not been available. To date there have been only a few claims. And we have no reason to believe, as of now, that there will be a great number of future claims emanating from the Nazi/World War II era. We are resolved to take each one most seriously, and act accordingly, in full recognition of all of our legal and moral obligations."

After issuing the Guidelines, the AAMD began a survey of its members. In an interview with IFAR, Lyndel King, Chair of the Art Issues Committee of the AAMD, noted that the survey is intended to reveal "which museum collections might be subject to claims; what the museums are actually doing to study their collections in light of the Guidelines; and what resources they think they will need to help them." Results of the survey are not yet known.

Because of their importance, as well as IFAR's long-standing interest in this subject, we are printing the Guidelines in entirety:

June 4, 1998

I. STATEMENT OF PRINCIPLES

A. AAMD recognizes and deplores the unlawful confiscation of art that constituted one of the many horrors of the Holocaust and World War 11.

B. American museums are proud of the role they, and members of their staffs, played during and after World War 11, assisting with the preservation and restitution of hundreds of thousands of works of art through the U.S. Military's Monuments, Fine Arts and Archives section.

C. AAMD reaffirms the commitment of its members to weigh, promptly and thoroughly, claims of title to specific works in their collections.

D. AAMD urges the prompt creation of mechanisms to coordinate full access to all documentation concerning this spoliation of art, especially newly available information. To this end, the AAMD encourages the creation of databases by third parties, essential to research in this area, which will aid in the identification of any works of art which were unlawfully confiscated and which of these were restituted. Such an effort will complement long-standing American museum policy of exhibiting, publishing and researching works of art in museum collections in order to make them widely available to scholars and to the general public. (See III. below.)

E. AAMD endorses a process of reviewing, reporting, and researching the issue of unlawfully confiscated art which respects the dignity of all parties and the complexity of the issue. Each claim presents a unique situation which must be thoroughly reviewed on a case-by-case basis.

II. GUIDELINES

AAMD has developed the following guidelines to assist museums in resolving claims, reconciling the interests of individuals who were dispossessed of works of art or their heirs together with the fiduciary and legal obligations and responsibilities of art museums and their trustees to the public for whom they hold works of art in trust.

A. Research Regarding Existing Collections

1. As part of the standard research on each work of art in their collections, members of the AAMD, if they have not already done so, should begin immediately to review the provenance of works in their collections to attempt to ascertain whether any were unlawfully confiscated during the Nazi/World War II era and never restituted.

2. Member museums should search their own records thoroughly and, in addition, should take all reasonable

steps to contact established archives, databases, art dealers, auction houses, donors, art historians and other scholars and researchers who may be able to provide Nazi/World War II era provenance information.
3. AAMD recognizes that research regarding Nazi/World War II era provenance may take years to complete, may be inconclusive and may require additional funding. The AAMD Art Issues Committee will address the matter of such research and how to facilitate it.

B. Future Gifts, Bequests, and Purchases
1. As part of the standard research on each work of art:
(a) member museums should ask donors of works of art (or executors in the case of bequests) to provide as much provenance information as possible with regard to the Nazi/ World War II era and
(b) member museums should ask sellers of works of art to provide as much provenance information as possible with regard to the Nazi/ World War II era.
2. Where the Nazi/World War II era provenance is incomplete for a gift, bequest, or purchase, the museum should search available records and consult appropriate databases of unlawfully confiscated art (see III below).
(a) In the absence of evidence of unlawful confiscation, the work is presumed not to have been confiscated and the acquisition may proceed.
(b) If there is evidence of unlawful confiscation, and there is no evidence of restitution, the museum should not proceed to acquire the object and should take appropriate further action.
3. Consistent with current museum practice, member museums should publish, display or otherwise make accessible all recent gifts, bequests, and purchases thereby making them available for further research, examination and study.
4. When purchasing works of art, museums should seek representations and warranties from the seller that the seller has valid title and that the work of art is free from any claims.

C. Access to Museum Records
1. Member museums should facilitate access to the Nazi/World War II era provenance information of all works of art in their collections.
2. Although a linked database of all museum holdings throughout the United States does not exist at this time, individual museums are establishing web sites with collections information and others are making their holdings accessible through printed publications or archives. AAMD is exploring the linkage of existing sites which contain collection information so as to assist research.

D. Discovery of Unlawfully Confiscated Works of Art
1. If a member museum should determine that a work of art in its collection was illegally confiscated during the Nazi/World War II era and not restituted, the museum should make such information public.
2. In the event that a legitimate claimant comes forward, the museum should offer to resolve the matter in an equitable, appropriate, and mutually agreeable manner.
3. In the event that no legitimate claimant comes forward, the museum should acknowledge the history of the work of art on labels and publications referring to such a work.

E. Response to Claims Against the Museum
1. If a member museum receives a claim against a work of art in its collection related to an illegal confiscation during the Nazi/World War II era, it should seek to review such a claim promptly and thoroughly. The museum should request evidence of ownership from the claimant in order to assist in determining the provenance of the work of art.
2. If after working with the claimant to determine the provenance, a member museum should determine that a work of art in its collection was illegally confiscated during the Nazi/ World War II era and not restituted, the museum should offer to resolve the matter in an equitable, appropriate, and mutually agreeable manner.
3. AAMD recommends that member museums consider using mediation wherever reasonably practical to help resolve claims regarding art illegally confiscated during the Nazi/World War II era and not restituted.

F. Incoming Loans
1. In preparing for exhibitions, member museums should endeavor to review provenance information regarding incoming loans.
2. Member museums should not borrow works of art known to have been illegally confiscated during the Nazi/World War II era and not restituted unless the matter has been otherwise resolved (e.g., II.D.3 above).

III. DATABASE RECOMMENDATIONS

A. As stated in I.D. (above), AAMD encourages the creation of databases by third parties, essential to research in this area. AAMD recommends that the databases being formed include the following information (not necessarily all in a single database):

1. Claims and claimants
2. Works of art illegally confiscated during the Nazi World War II era
3. Works of art later restituted

B. AAMD suggests that the entity or entities creating databases establish professional advisory boards that could provide insight on the needs of various users of the database. AAMD encourages member museums to participate in the work of such boards.

The Statute of Limitations in Art Recovery Cases: An Overview

There is perhaps no legal rule as much debated in claims for the recovery of stolen art as the Statute of Limitations. The Statute of Limitations embodies the policy of "giving repose to human affairs"[1] and was enacted to protect defendants against stale claims asserted long after the events at issue occurred. "The policy of repose behind the Statute of Limitations protects defendants by preventing surprises caused by the revival of stale claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared."[2]

The Statute of Limitations begins to run when the claim "accrues," that is, when a suit may be maintained on that claim. The New York Statute of Limitations governing actions for the recovery of property requires that suit be brought within three years of the time the action accrued.[3] In most cases it is not difficult to determine the moment of accrual; where an owner pursues a party who wrongfully took his property, the three year period begins to run when the property was taken. But art recovery claims can present a myriad of problems in this regard.

First of all, claims for the recovery of stolen art often seek the recovery of unique and irreplaceable objects, where money damages will not suffice and only the return of the object itself will do. Where one is dealing with a clearly identifiable object, particularly one stolen from a documented or catalogued public or private collection, both the object and the date of the theft may be easy to identify. The plot thickens, however, when the objects are pillaged from unexcavated archaeological sites and have been removed from the country of origin before archaeologists or museum officials have been able to view, much less document, them. In such cases, both the date of the theft and exact descriptions of the objects may be difficult to ascertain, resulting in delays in locating the property and creating obvious Statute of Limitations issues.

In addition, stolen art may surface long after the initial theft, and often only after it has passed into the hands of an asserted good faith purchaser who has no privity at all to the thief; and, indeed, may pass from one good faith purchaser to another. Under the common law in effect in the United States and Canada, no one, not even a good faith purchaser, can acquire good title to stolen property,[4] and a claim can therefore be brought against the good faith purchaser by the true owner. But, by necessity, such claims often cannot be brought until years or even decades after the original theft, *i.e.*, after the owner first learns that the property has surfaced. This will often be the situation with Holocaust era art claims, which are so much in the news at this time.

Yet another complicating factor is that Statutes of Limitations vary in length and type from one jurisdiction to another in the United States and are strikingly different in most European countries, which, unlike the United States and Canada, are governed by Civil Codes (one exception being the United Kingdom, which is a common law jurisdiction).[5] Different jurisdictions even apply different rules as to when a claim accrues, and the potential for uncertainty is heightened by the variety of limitations rules employed. In an action for replevin, *i.e.*, an action to recover possession of the property taken, the limitations period will normally run against the original owner from the time the taking occurred.[6] Exceptions have been made, however, for situations where the possessor has committed fraud or otherwise concealed the object.[7]

[1] David D. Siegel, *New York Practice* 37 (2nd ed. 1991).

[2] Meyer v. Frank, 550 F.2d 726, 730 (2d Cir. 1977), *cert. denied*, 434 U.S. 830, 54 L.Ed.2d 90, 98 S.Ct. 112 (1977).

[3] N.Y.Civ.Prac.L.&R. 214(3) (McKinney 1990 & Supp. 1996).

[4] W. Page Keeton et al., Prosser and Keeton on the Law of Torts §15, at 93-94 (5th ed. 1984).

[5] Civil Codes are statutes of general principle, which are applied by judges to all aspects of law. Under the Civil Codes in effect in most European countries a good faith purchaser of stolen property can obtain good title after holding the property for what is in many cases a short period of time. *See generally* P.J. O'Keefe and L.V. Prott, 3 Law and the Cultural Heritage §005 at 3 (London & Edinburgh, 1989). Some of the limitations periods of Civil Code countries may also have been modified by agreements such as the European Council Directive 93/7/EEC of March 15, 1993, which, in article 7, sets forth the limitations periods for certain classified cultural objects that have been unlawfully removed from the territory of a member State.

[6] Solomon R. Guggenheim Found. v. Lubell, 550 N.Y.S.2d 618, 620 (1st Dept.) (citations omitted), *aff'd*, 567 N.Y.S.2d 623 (Ct.App. 1991).

[7] General Stencils v. Chiappa, 18 N.Y.2d 125, 272 N.Y.S. 2d 337, 219 N.E. 2d 169 (1966).

Moreover, especially when confronted with claims of lost or stolen cultural property, the legislatures and courts often devise special rules to meet the specific circumstances pertaining to such cases. Thus, three major rules for such cases have been developed in the United States: the "discovery rule," now being used in one form or another in a number of states; a special statute for art objects adopted in California; and the "demand and refusal" rule employed in New York and a few other states.[8]

THE DISCOVERY RULE

Many states utilize the discovery rule, which provides that the Statute of Limitations begins to run when the claimant knew, or with reasonable diligence should have known, the location and identity of the possessor of its property.

O'Keefe v. Snyder

In New Jersey, the landmark art case is *O'Keefe v. Snyder*[9] in which the artist Georgia O'Keefe commenced a replevin action against a *bona fide purchaser* in 1976 for the return of three paintings that had been stolen from an exhibition in 1946. O'Keefe had not publicly advertised the loss, but she had discussed it with associates in the art world and in 1972 she had reported the loss to the Art Dealers Association of America.[10] In September 1975 she learned that the paintings were in a gallery in New York, and in February 1976 she learned that they had been sold to the defendant, Barry Snyder. The trial court had granted summary judgment for the defendant on the ground that O'Keefe's action was barred by the Statute of Limitations.[11] Concluding that works of art pose special problems because they are readily moved and easily concealed, the Supreme Court of New Jersey reversed the lower court and formulated a discovery rule in actions for replevin: "[the] cause of action accrued when she first knew, or reasonably should have known through the exercise of due diligence, of the cause of action, including the identity of the possessor of the paintings. . . . For example, under the discovery rule, if an artist diligently seeks the recovery of a lost or stolen painting, but cannot find it or discover the identity of the possessor, the statute of limitations will not begin to run."[12]

The court acknowledged that the meaning of due diligence will vary with the facts of each case and that the equitable claims of all parties must be considered in applying the discovery rule.

Autocephalous v. Goldberg

The important case of *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc.*[13] also illustrates how the discovery rule may be applied. The case involved four sixth century A.D. mosaic panels that had been stolen from the sanctuary of the Kanakaria Church of Cyprus in or about 1979 and had resurfaced only in 1988 in the hands of Peg Goldberg, an art dealer in Indiana. The District Court held that the cause of action did not accrue until the Republic of Cyprus, using due diligence, knew who the possessor of the mosaics was.[14] Goldberg challenged the lower court's application of the discovery rule as being in conflict with "established Indiana limitations principles," and on the ground that, even if the discovery rule were to apply, the court's holding that "the operative discovery had to include the identity of the holder," was erroneous.[15] The Court of Appeals rejected both arguments. Confirming that the discovery rule was applicable under Indiana law, the court stated that the lower court "applied legal principles set out in Indiana cases, and generally accepted elsewhere, to a new situation not yet addressed by the Indiana courts."[16] Moreover, in affirming the lower court's finding that the plaintiff had been diligent, the court stated that the operative "discovery" had to include the identity of the holder and not merely the general location of the object.[17] Citing *O'Keefe,* the court also emphasized that the determination of due diligence as required by the discovery rule is "fact sensitive and must be made on a case by case basis."[18]

Erisoty v. Rizik

That the inquiry must be fact sensitive is amply illustrated by the recent case of *Erisoty v. Rizik,*[19] in which an 18th century masterpiece by Corrado Giaquinto entitled "Winter" had been stolen from the Riziks in Washington, D.C. in 1960 and purchased at auction in Philadelphia by the Erisotys in 1989.

The Riziks had reported the theft to the Metropolitan police and the F.B.I. in 1960 and were in contact with the F.B.I. until 1979, but to no avail. In 1988 the painting was found – ripped into five pieces and stuffed into a plastic bag – by the owner of a removal service that had been hired to clean out a Philadelphia house.

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[8] Prosser and Keeton §15, at 94.

[9] 83 N.J. 478, 416 A.2d 862 (S.Ct. N.J. 1980).

[10] *Id.* at 484.

[11] *Id.* at 478.

[12] *Id.* at 493, 496.

[13] 717 F.Supp.1374 (S.D. Ind. 1989), *aff'd.*, 917 F.2d 278, 289 (7th Cir. 1990).

[14] 717 F. Supp. at 1389, 1399.

[15] 917 F.2d at 189.

[16] *Id.*

[17] *Id.*

[18] 717 F.Supp. at 1389 (citation omitted).

[19] Erisoty v. Rizik, No. CIV.A. 93-6215, 1995 U.S. Dist. LEXIS 2096, *aff'd.*, No. 95-1807, 1996 U.S. App. LEXIS 14999 (3rd Cir. 1996).

It was brought to the Philadelphia Museum of Art, where experts were consulted and the painting was attributed to Giaquinto, but no information regarding the provenance of the painting was known. The painting was then consigned to an auction house in 1989 and purchased by the Erisoty family for $29,050, with the intention that Stephen Erisoty, a professional conservator, would restore it and it would then be offered for sale.

In 1992 the Riziks learned of the International Foundation for Art Research ("IFAR"), filed an Art Theft Report with IFAR, and authorized IFAR to publish the report with photographs and publicize their offer of a reward. The report was seen by a former conservator at the Philadelphia Museum, who informed the curator, who notified IFAR. IFAR, in turn, informed the Philadelphia office of the FBI, which tracked the painting to the Erisoty family, who surrendered possession of the painting and then sued for its return.

At trial, the Statute of Limitations was the critical issue. The Erisotys sought to recover the painting on the ground that the Riziks, as theft victims, had not been diligent in their search and were therefore barred by the Statute of Limitations. The Riziks contended that, as they were the original owners, and the Erisotys only possessors who sought to regain possession of the painting from its original owners, it was for the Erisotys to show due diligence in investigating the provenance of the painting before their purchase. Thus, the usual position of the parties was reversed: the plaintiffs sought to use the discovery rule "as a sword rather than [a] shield."[20] The court, however, stated that under the discovery rule, the burden of proving due diligence rests with the original owner, as the party "seeking the benefit of the rule to establish facts that would justify deferring the beginning of the period of limitations."[21]

In weighing "the balance of equities," the court noted that the condition of the painting – i.e., ripped into five pieces – indicated suspicious circumstances that should have alerted the Erisotys to possible problems. The court held the Riziks had been reasonably diligent, stating that "the standard is not whether . . .[the original owners] did everything that might have been done with the benefit of hindsight, but whether their efforts were reasonable given the facts of the case."[22]

THE "CALIFORNIA" RULE

California has a special accrual rule applicable to objects of historical or artistic significance. The rule, which went into effect in 1983, provides that actions to recover such property do not accrue until the *actual* discovery of the whereabouts of the object.[23]

In an important recent case, the California Court of Appeals held that the rule applied even to actions that preceded the new enactment. *Naftzger v. The American Numismatic Society*[24] involved rare coins stolen from the American Numismatic Society before 1970 and discovered in 1990 in the hands of Roy Naftzger, who had purchased them in good faith from the alleged thief. The trial court had found that the Statute of Limitations began to run at the time of the theft, in or before 1972, and that the relevant limitations period at that time provided a three year limitations period in "actions for the specific recovery of personal property."[25] The California Court of Appeals reversed, finding that the statute left unanswered "the general question of whether the cause of action immediately accrues when the theft occurs, or when the owner discovers: (a) the theft, (b) the identity of the thief, or (c) the identity of the person in possession of the stolen property." The court held that there was an implicit actual discovery rule in the pre-1983 version of the Statute of Limitations for the recovery of stolen property: "the cause of action accrued when the owner discovered the identity of the person in possession of the stolen property, without regard to the owner's diligence or lack thereof in ferreting out that information."[26]

THE "DEMAND AND REFUSAL" RULE

New York employs the "demand and refusal" rule, pursuant to which a claim to recover stolen property from a good faith purchaser does not accrue until the possessor refuses to return the object upon demand. The owner has three years thereafter to commence suit.[27] The rule has been a mainstay of New York law since the last century, when the Court of Appeals held:

[20] *Id.* at *11.

[21] *Id.* at *11-12.

[22] *Id.* at *14.

[23] Cal.Civ.Proc.Code §338(c) provides that an action must be brought within three years: "for taking, detaining, or injuring any goods or chattels, including actions for the specific recovery of personal property. The cause of action in the case of theft. . .of any article of historical, interpretive, scientific, or artistic significance is not deemed to have accrued until the discovery of the whereabouts of the article by the aggrieved party, his or her agent, or the law enforcement agency which originally investigated the theft." (West 1982 & Supp. 1996)

[24] 42 Cal.App. 421 (1996).

[25] Cal. Civ. Proc. Code §338(3).

[26] 42 Cal. App. at 425; *see generally* Carla J. Shapreau, *California's Discovery Rule Is Applied to Delay Accrual of Replevin Claims in Cases Involving Stolen Art*, 1 Art Antiquity and Law 407 (1996).

[27] N.Y. Civ.Prac.L.& R. 214(3) (McKinney 1990 & Supp.1996).

> The rule is a reasonable and just one, that an innocent purchaser of personal property from a wrongdoer shall first be informed of the defect in his title and have an opportunity to deliver the property to the true owner before he shall be made liable as a tort feasor for wrongful conversion.[28]

Weimar v. Elicofon

One of the best illustrations of the application of the "demand and refusal" rule is the landmark case of *Kunstammlungen zu Weimar v. Elicofon*.[29] The *Weimar* case involved two extraordinary Fifteenth Century portraits by Albrecht Dürer stolen from the collections of the Weimar Museum. The paintings had been stored in the Schwarzburg Castle, where they had been moved for safekeeping during World War II. During the occupation of the castle by American troops, the paintings disappeared. They were discovered some twenty years later in the possession of a Brooklyn attorney, Edward I. Elicofon, who had purchased them in 1946 for $450 from an American serviceman who showed up at Elicofon's home, claiming that he had bought the paintings in Germany. The discovery of the identity of the paintings was fortuitous – a friend of Elicofon's who had seen them in his house recognized them in a newly published book on German art works stolen during World War II.[30]

Under New York's "demand and refusal" rule, the limitations period began to run in 1966, when Elicofon, after allegedly learning of the paintings' true identity for the first time, held a press conference to announce his discovery and was immediately confronted with demands for their return from three parties: the Weimar Museum (which was later found by the court to be an instrumentality of what was then the Government of East Germany); the hereditary Grand Duchess of Saxony-Weimar-Eisenach, who claimed that her husband, the Grand Duke, owned the paintings in his private capacity; and finally, the Government of West Germany, which claimed to be the sole representative of all the German people pending unification. Elicofon rejected all of these demands.[31]

Elicofon sought to discredit the "demand and refusal" rule, claiming that it was unfair because the demand upon a *bona fide purchaser* could "indefinitely postpone commencement of the action, while the thief would have long since gained immunity from suit." The court disagreed, citing the principle that a thief who conceals his possession and thereby makes it impossible for the true owner to locate the property and initiate a suit would be barred from asserting the Statute of Limitations as a defense.[32] After some 13 years of hard-fought litigation, Elicofon's position was soundly rejected by the courts and the paintings were returned to the Weimar Museum.[33] The *Weimar* case is a perfect example of how the Statute of Limitations issue can inject an enormous amount of time and expense into art recovery cases.

Guggenheim v. Lubell

As the New York Court of Appeals made clear in 1991 in the important case of *Guggenheim v. Lubell*, New York's "demand and refusal" rule strikes a balance in favor of the interests of the original owner – the victim of the theft – over those of the *bona fide purchaser*.[34] At issue in *Guggenheim* was a Chagall gouache that had disappeared from the Guggenheim Museum some time in 1965 and was purchased by the Lubells in 1967. The Museum did not learn of the painting's location until 1985 and in 1986 formally demanded the return of the painting; the Lubells refused.[35] Although the trial court found the cause of action barred by the Statute of Limitations, the Appellate Division reversed, stating that "we think it plain that the relative possessory rights of the parties cannot depend on the mere passage of time."[36] The reasonableness of any asserted delay in the Museum's search for the painting was a question of fact. Further, the court held that in balancing the equities, the reasonableness of both parties must be weighed: "the defendant's vigilance is as much in issue as the plaintiff's diligence, which is another reason why we characterize the defense urged here as laches."[37] The Court of Appeals affirmed the decision and held that New York law did not require any showing of reasonable diligence to satisfy the Statute of Limitations, confirming that any alleged delay in conducting a search

[28] Gillet v. Roberts, 57 N.Y. 28, 34 (1874).

[29] 536 F.Supp. 829 (E.D.N.Y. 1981), *aff'd*, 678 F.2d 1150 (2d Cir. 1982).

[30] 536 F. Supp. at 846.

[31] Id. at 833.

[32] 678 F.2d 1150, 1163 n.23 (2d Cir. 1982), citing General Stencils v. Chiappa, 18 N.Y.2d 125, 272 N.Y.S. 2d 337, 219 N.E. 2d 169 (1966).

[33] 678 F.2d 1150, 1163-64. In 1975 the Government of West Germany discontinued its claim with prejudice and in 1978 the court dismissed the Grand Duchess' claim. *See* 536 F.Supp. at 815, 828.

[34] Guggenheim v. Lubell, 567 N.Y.S. 2d at 627.

[35] 567 N.Y.S. 2d at 625.

[36] 550 N.Y.S. 2d at 622.

[37] *Id.* at 623. Laches is the equitable doctrine of undue delay; the laches defense is predicated on the neglect to assert a claim, which, taken together with a lapse of time and other circumstances causing prejudice to the adverse party, operates as a bar in a court of equity, separate and apart from any Statute of Limitations defense.

constitutes a question of fact properly decided at trial under the equitable doctrine of laches. Under this doctrine, the defendant would have to prove, *inter alia,* that he suffered prejudice as a result of the delay.

The New York limitations rule has been criticized by some as providing no limitations period at all. The critics point out that plaintiffs have been able to prevail even though the demand was not made until many years after the theft, and, just as in *Elicofon,* they argue that the rule favors the thief over the *bona fide purchaser.*[38] The parties, however, are not equally innocent victims. As one expert has pointed out, "[t]he purchasers with whom we are dealing – and museum purchasers in particular – are not for the most part unsophisticated. . . . In an extreme case we might even question whether he really is a 'good faith' purchaser at all."[39] In the final analysis, the New York "demand and refusal" rule does strike a fair balance, "one that is protective of both parties but inclines somewhat more toward the original owner than the subsequent purchaser. They are both victims, but the former would appear to be the more innocent victim than the latter."[40]

HOLOCAUST CLAIMS AND THE NEW YORK STATUTE OF LIMITATIONS

No discussion of the Statute of Limitations and its relationship to the claims of innocent victims of theft would be complete without some reference to the growing number of claims asserted by the heirs of Holocaust victims against good faith purchasers of artworks previously confiscated from their owners by the Nazi regime. As should be clear from the above discussion, New York's "demand and refusal" rule, which favors original owners, will provide an enormous benefit to such heirs in connection with claims asserted against good faith purchasers of art confiscated during the Holocaust. Under the New York rule, these claims accrue only when the heirs first make a demand for the artwork and it is refused, and they should therefore be able to withstand any challenge of untimeliness under the New York Statute of Limitations.

We note, however, that in a recent article in the *IFAR Journal,* Franklin Feldman expressed concern that New York's "borrowing statute" could have a "devastating effect" on claims for Nazi-confiscated art and prevent the heirs of Holocaust victims from enjoying the benefits of New York's "demand and refusal"rule.[41] Simply put, his concerns are unfounded.

The "borrowing statute" – Section 202 of the New York Civil Practice Law and Rules – basically provides that where a non-resident sues in New York on a claim that arises in a foreign jurisdiction, the court will apply either the Statute of Limitations of New York or of the jurisdiction *where* the claim accrues, whichever is shorter. Feldman concludes that whenever Holocaust claims are brought in New York, the New York court will be required to apply the Statute of Limitations of the foreign jurisdiction (*e.g.,* Germany) where the theft occurred. But, particularly in Holocaust cases, a New York action to recover stolen art will typically, if not always, be brought against a collector, dealer or museum who claims to be a good faith purchaser and not against the original thief. Under New York's "demand and refusal" rule, the claim will accrue in New York (not the place of the theft) when the purchaser refuses the claimant's demand to return the stolen work. The borrowing statute would therefore not be implicated and the fact that the original theft may have occurred in Germany fifty years before would be irrelevant to the limitations issue.[42] As the New York Court of Appeals in *Guggenheim* made clear, demand and refusal are *substantive* elements of a claim for the recovery of property and must occur before any such claim can be deemed to have accrued.[43]

[38] *See generally* Ashton Hawkins, Richard A. Rothman and David B. Goldstein, *A Tale of Two Innocents: Creating an Equitable Balance Between the Rights of Former Owners and Good Faith Purchasers of Stolen Art,* 64 Fordham L.Rev. 49 (1995).

[39] Stephen Weil, *Repose,* 8 *IFAReports* 6-7 (1987).

[40] *Id.* at 7.

[41] Franklin Feldman, *New York's Statute of Limitations with Respect to Stolen Art and Holocaust Claims,* Vol. I, 2 *IFAR Journal* 16 (1998).

[42] To the extent that the borrowing statute would operate to exclude some Holocaust claims where, under the particular circumstances, the action would be deemed to have accrued outside of New York, as Feldman himself suggests (in discussing a new proposal regarding the New York Statute of Limitations), the borrowing statute could be amended to exclude Holocaust victim claims (or, for that matter, other non-residents such as foreign governments seeking the return of smuggled artworks or antiquities).

[43] Guggenheim v. Lubell, 567 N.Y.S.2d at 627. Thus, in two of the cases cited by Feldman for the proposition that New York cases for the recovery of stolen property are often brought by non-residents (at p. 16, n.3), the cause of action was found to have accrued in New York upon demand and refusal and the New York Statute of Limitations was applied. (*See* Elicofon, 536 F.Supp. at 848 and De Weerth v. Baldinger, 836 F.2d 103, 106 (2d Cir. 1987)). In the third case cited (Stroganoff-Scherbatoff v. Weldon, 420 F.Supp. 18 (S.D.N.Y. 1976)), the Statute of Limitations issue was never reached.

Since Feldman's concern about the effect of the borrowing statute upon the heirs of Holocaust victims is unwarranted, it goes without saying that it should not be used as justification for *eliminating* the centuries-old "demand and refusal" rule and substituting some new statutory scheme apparently designed to afford better protection of the interests of good faith purchasers.[44]

As the Court of Appeals acknowledged, the best way to protect victims of art theft, and not only Holocaust victims, is to safeguard New York's "demand and refusal" rule: "While the demand and refusal rule is not the only possible method of measuring the accrual of replevin claims, *it does appear to be the rule that affords the most protection to the true owners of stolen property*. . . .There is no reason to obscure its straightforward protection of true owners by creating a duty of reasonable diligence."[45] As the Court also maintained, New York's position as the preeminent art center of the world and the need to prevent it from becoming a haven for stolen art requires that the "demand and refusal" rule be retained, because it protects the true owner – "the shifting of the burden onto the wronged owner is inappropriate. . .and the better rule gives the owner relatively greater protection and places the burden of investigating the provenance of a work of art on the potential purchaser."[46] In sum, to change the rules in the midst of the rising tide of Holocaust claims would obviously harm – not help – the heirs of Holocaust victims.

Lawrence M. Kaye
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[44] Feldman suggests that a proposal now circulating in New York would protect both good faith purchasers and theft victims. I have seen at least one version of the draft bill which, in my view, tips the scales substantially in favor of protecting *bona fide purchasers* over theft victims and, indeed, entirely eliminates certain types of claims, *e.g.*, for antiquities stolen from as yet unexcavated sites, or, as in *Guggenheim*, uncatalogued objects or artworks in storage, which may not be discovered to be missing for many years. But I am informed that a bill containing this proposal has not yet been submitted to the New York legislature, and I will therefore reserve comment on the provisions of the proposal until a later time.

[45] *Guggenheim*, 567 N.Y.S.2d at 627 (emphasis added).

[46] *Id.* at 628.

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Catalogues raisonnés [scholarly compilations/documentation of an artist's complete body of work] are essential research tools for art authentication and for the curtailment of fakes and forgeries. Because these areas are central to IFAR's mission and of interest to our readers, we will use the Book Review section of IFAR JOURNAL *from time to time to inform you of newly published catalogues raisonnés as well as those underway. Readers should feel free to send us updated information about this. Below is a partial list – NOT A CRITIQUE – of catalogues raisonnés published in the last two years.*

Catalogue Raisonné de Jean **BÉRAUD.** Offenstadt, Patrick. Preface by Georges Bernier, documentation and iconography by Nicole Castais and Pierre Saurisse. Cologne: Taschen; Paris: Wildenstein Institute, 1998.

Joseph **BEUYS:** *The Multiples: Catalogue Raisonné of Multiples and Prints.* 8th ed. Schellmann, Jorg , ed. Cambridge, Mass: Busch-Reisinger Museum, Harvard University Museum; Minneapolis, Minn.: Walker Art Center; Munich; New York: Edition Schellmann; New York: Distributed in North America and Asia by D.A.P./Distributed Art Publishers, 1997.

Pieter **BRUEGEL:** *Die Zeichnungen.* Mielke, H. Turnhout: Brepols, 1996. A catalogue raisonné of drawings by Bruegel the Elder.

The Paintings of Paul **CÉZANNE:** *A Catalogue Raisonné.* 2 vols. Rewald, John. In collaboration with Walter Feilchenfeldt and Jayne Warman. New York: Harry N. Abrams, 1996.

Camille **CLAUDEL:** *Catalogue Raisonné.* Rivière, Anne et al. Paris: Adam Biro, 1996.

The Earlier Paintings and Drawings of John **CONSTABLE.** 2 vols. Reynolds, Graham. New Haven: Yale University Press, 1996. Discusses works between 1790 and 1816. Supplement includes works which appeared after the publication of this book's sister work, *The Later Paintings and Drawings of John Constable.*

Charles-François **DAUBIGNY,** *1817–1878 (Supplement).* Hellebranth, Robert and Anne, 1997. A supplement to the 1994 catalogue raisonné.

DELACROIX: *The Graphic Work: A Catalogue Raisonné.* Delteil, Loys. Translated and revised by Susan Strauber. San Francisco: Wofsy, 1997. A complete revision of the 1908 Delteil catalogue.

André **DERAIN:** *Catalogue Raisonné de l'Oeuvre Peint. Tome II: 1915–1934.* Kellerman, Michel. Paris: Galerie Schmit, 1996.

The Complete Works of Marcel **DUCHAMP.** 3rd revised and expanded ed. 2 vols. Schwarz, Arturo, ed. New York: Delano Greenridge Editions, 1997.

FRANKENTHALER: *A Catalogue Raisonné, Prints, 1961–1994.* Harrison, Pegram. New York: Abrams, 1996.

GAUDIER-BRZESKA. Silber, Evelyn. London: Harper and Thames, 1996. Catalogue raisonné of this artist's sculpture.

Catalogue Raisonné des Peintures de Paul **GAUGUIN.** *Nouvelle éd. Volume I: Les débuts de la carrière du peintre jusqu'en 1888 (Paris, les deux periode de Pont-Aven, La Martinique et Andes).* Wildenstein, Daniel. Text and research by Sylvie Crussard and Martine Heudron, 1998. Update of 1964 ed.

Théodore **GÉRICAULT**. *Volume VII: Regard social et politique: le séjour anglais et les heures de souffrance. Avec Fascicule: Annexes aux sept volumes du catalogue raisonné.* Bazin, Germain. Documentation by Élisabeth Raffy. Paris: Foundation Wildenstein/ Wildenstein Institute, La Bibliothèque des Arts, 1997.

GIORGIONE: The Painter of "Poetic Brevity." Including Catalogue Raisonné. Anderson, Jaynie. Paris; New York: Flammarion, 1997. Translated from the French.

Charles **GLEYRE**, *1806–1874: Biography and Catalogue Raisonné.* 2 vols. *Vol. I: Life and Works, Vol. II: Catalogue Raisonné.* Hauptman, William. Princeton, NJ: Princeton University Press, 1997.

Felix **GONZALEZ-TORRÉS**: *Catalogue Raisonné.* 2 vols. Elger, D. et al. Stuttgart: Cantz, 1997.

Alexej von **JAWLENSKY**: *Catalogue Raisonné. Volume IV: Watercolors and Drawings 1890–1938.* Jawlensky, Maria et al. London: Sotheby's Publications, 1998. Completes a four-volume catalogue raisonné of oil paintings and works on paper. Includes addendum to the catalogue raisonné of paintings published in 1991–93.

Paul **KLEE**: *Catalogue Raisonné of the Complete Work. Volume I: 1883–1912* (first of 8 projected vols.). Paul Klee Foundation, Berne. Berne: Benteli Verlag, 1998.

Georg **KOLBE**: *das druckgraphische Werk.* Rosenbach, Detlev. Berlin: Edition Rosenbach Hannover im Gebr. Mann Verlag, 1997.

Käthe **KOLLWITZ**: *The Graphic Work.* Klipstein, Dr. August. Revised text by Alexandra van dem Knesebeck. Basel: Galerie Kornfeld, 1998.

Fernand **LÉGER**: *Catalogue Raisonné de l'Oeuvre Peint. Vol. V: 1932–1937; Vol. VI: 1938–1943* (Two of nine vols.). Bauquier, Georges. Paris: Maeght, 1996; 1997. In French.

The Sculpture of Jacques **LIPCHITZ**. *A Catalogue Raisonné. Volume I: The Paris Years, 1910–1940.* Wilkinson, Alan G. New York: Thames and Hudson, 1996.

Filippo **LIPPI**: *catalogo completo. Biblioteca d'arte*, vol. 7. Mannini, Maria Pia. Firenze: Octavo, 1997.

René **MAGRITTE**: *Catalogue Raisonné. Volume V: Supplement, Exhibition Lists, Bibliography, Cumulative Index.* Sylvester, David , ed., Sarah Whitfield, Michael Raeburn and Lynette Cawthra. London: The Menil Foundation/ Philip Wilson, 1997.

MAKRON. 2 vols. Kunisch, Norbert- Mainz/Rhein: P. von Zabern, 1997. The catalogue raisonné of a 5th-century Greek vase painter.

Henri **MATISSE**: *Catalogue Raisonné of Sculpture.* Duthuit, Claude, ed., with Françoise Garnaud. New York: 1997. In French and English.

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*M. Piet **MONDRIAN**: Catalogue Raisonné.* Joosten, Joop M. and Robert P. Welch. New York: H. N. Abrams, 1996.

***MONET** ou le triomphe de l'impressionnisme. Catalogue raisonné-Werkverzeichnis.* 4 vols (Revised and updated from 5-vol., 1974–1992 ed.). Wildenstein, Daniel. Cologne: Taschen; Paris: Wildenstein Institute, 1996. Editions in French, English and German. Includes 100 newly discovered paintings.

*Henry **MOORE** Complete Drawings (1916–1983). Vol. I: 1916–1929; Vol. II: 1930–1939.* Garrould, Ann. London: Lund Humphries, 1996.

*Henry **MOORE** Complete Drawings (1916–1983)* (the first 2 of 6 vols.). Garrould, Ann. London: Lund Humphries, 1997. Edited by the Curator of Drawings at the Henry Moore Foundation.

*Berthe **MORISOT**, 1841–1895: catalogue raisonné de l'oeuvre peint.* Clairet, Alain et al. In French. Montolivet: CERA, 1997.

*Emil **NOLDE**. Das graphische Werk.* 2 vols. Schiefler, Gustav. Cologne: Dumont, 1996. . Revised and enlarged edition of the 1911 and 1926 Schiefler catalogue raisonné.

***PICASSO**. Volume I: Catalogue of the Printed Graphic Work, 1904–1967.* Revised and updated. Bloch, Georges. Berne: Editions Kornfeld, 1998. Revised and updated. Text in English, French and German.

***PICASSO** Comprehensive Catalogue.* Vols. I-IV: 1996; Vols. V-VIII: 1997. Chipp, Herschel, Mariel Jardines, et al. San Francisco: 1996–1997. In French and English. Combines works which have recently come to light with earlier catalogues.

***PICASSO**: Peintre-Graveur: Catalogue Raisonné de L' Oeuvre Gravé et Lithographie et des Monotypes. Volume VII: 1969–1972 plus Supplement.* 2 vols. Geiser, Bernhard and Brigitte Baer. Berne: Galerie Kornfeld Editions, 1996. In French. Final volume of the catalogue raisonné of the artist's graphic works. Contains an addendum to vols. I–IV. The complete volumes cover the years 1899–1972.

*Odilon **REDON**. Catalogue raisonné de l'oeuvre peint et dessiné. Vol. III: Fleurs et paysages.* 1996; *Vol. IV: Études et grandes decorations*, 1998. Wildenstein, Alec with Agnes Lacau St Guily and Marie-Christine Decrooq. Paris: Wildenstein Institute, La Bibliothèque des Arts.

*Frederic **REMINGTON**: A Catalogue Raisonné of Paintings, Watercolors, and Drawings.* 2 vols. Hassrick, Peter H., and Melissa J. Webster. Cody, Wyoming: Buffalo Bill Historical Center, 1996. CD-ROM includes additional material.

*Mark **ROTHKO**: A Catalogue Raisonné.* Anfam, David. New Haven: Yale University Press, 1998. A catalogue raisonné of the paintings.

*Theodore **ROUSSEAU** 1812–1867: Catalogue Raisonné de l'Oeuvre Graphique.* Schulman, Michel. Paris: Editions de l'Amateur, 1997. In French.

*Theo van **RYSSELBERGHE**: l'ornement du livre. Catalogue raisonné.* Fontainas, Adrienne. Antwerpen: Pandora, 1997.

*John Singer **SARGENT**: The Early Portraits. The Complete Paintings: Volume 1.* Ormond, Richard and Elaine Kilmurray. New Haven: Published for the Paul Mellon Centre for Studies in British Art by Yale University Press, 1998.

*Egon **SCHIELE**: The Complete Works.* 2nd ed. Kallir, Jane. New York: Harry N. Abrams, 1998. An expanded reprint of the 1990 edition with a supplement and 205 additional works.

***SOULAGES**: L'Oeuvre Complet sur Toile. Tome III: 1978–1996.* Encrevé, Pierre. Paris: Editions du Seuil, 1996.

*Nicolas de **STAEL**: catalogue raisonné de l'oeuvre peint.* Stael, Françoise de, Anne de Stael and Germain Viatte. Neuchatel: Ides et Calendes, 1997. In French. Includes 500 of the artist's letters.

***TÀPIES**: The Complete Works. Vol IV: 1976–1981.* Agusti, Anna with foreword by Jacques Dupin. New York: Rizzoli, 1996.

*Cy **TWOMBLY**: Catalogue Raisonné of the Paintings. The Boxed Set.* 4 vols. Bastian, Heiner. Munich: Schirmer/Mosel, 1996. In German and English.

*Cy **TWOMBLY**: Catalogue Raisonné of Sculpture. Volume I: 1946–1997.* Roscio, Nicola del and Arthur Danto. Munich: Schirmer/Mosel, 1997.

*The New Complete **VAN GOGH**: Paintings, Drawings, Sketches.* Updated and revised from the 1980 ed. Hulsker, Jan. Philadelphia: John Benjamins Publishing Co., 1996.

Vincent **VAN GOGH** *Complete Early Paintings and Drawings: Drawings. Vol. I: The Early Years 1880–1883; Vol. II: Nuenen 1883–1885.* (The first 2 of an 8-vol. series on works by the artist held at the Van Gogh Museum, Amsterdam; there will also be a volume on works held at other collections.) van Heugten, Sjaar. London: Lund Humphries, 1996; 1997.

Vincent **VAN GOGH**, *Paintings Volume I: Dutch Period, 1881–1885.* Tilborgh, L. van. London: Lund Humphries, 1997.

***VELAZQUEZ**: le peintre des peintres. L'oeuvre complet.* Lopez-Rey, José. Edited by Odile Delenda. Cologne: Taschen; Paris: Wildenstein Institute, 1997, 1998. Editions in French, English, German, Spanish and Portuguese.

Andy **WARHOL** *Prints: A Catalogue Raisonné 1962–1987.* 3rd revised and expanded ed. Feldman, Frayda and Jorg Schellmann. New York: D.A.P./Distributed Art Publishers in association with Ronald Feldman Fine Arts, Inc., Edition Schellmann, and Andy Warhol Foundation for the Visual Arts, Inc., 1997.

Antoine **WATTEAU**: *catalogue raisonné des dessins.* 3 vols. Rosenberg, Pierre and Louis-Antoine Prat. Milan: Leonardo Arte, 1996. In French.

The Lithographs of James McNeill **WHISTLER**. *Volume I: A Catalogue Raisonné. Volume II: Correspondence and Technical Studies.* Tedeschi, Martha, ed. Chicago: Art Institute, 1998.

Felix **ZIEM**, *1821–1911. Supplement.* Miquel, Pierre. Cannes: Eds de la Martinelle, 1997. Supplement to the 1978 ed. In French. Includes 1,680 additional works.

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Stolen Art

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90. Willem de Kooning (American, 1904–1997). *Untitled,* 1969. Oil on newspaper on canvas. 32 x 25 in. *N98.240.2. New York, NY. Dec. 16, 1997.

91. William Forsyth (American, 19th century). *Small Still Life with Pipe,* 1880. Oil on canvas. 6⅛ x 7½ in. *N98.163. Indianapolis, IN. Mar. 25, 1998.

92. American, 19th century. *Portrait of Stephen Van Rensselaer.* Oil on canvas. 24 x 29 in. *N98.175.1. Troy, NY. Apr. 4, 1998.

93. American, 19th century. *Portrait of Frances Knight,* 1852. Oil on canvas. *N98.213. San Bernardino, CA. Stolen between 1968 and May 1997.

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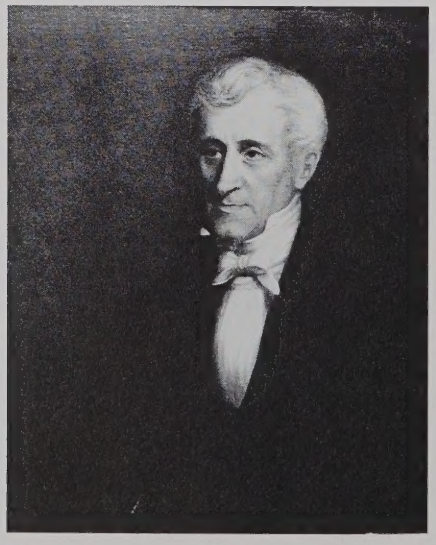

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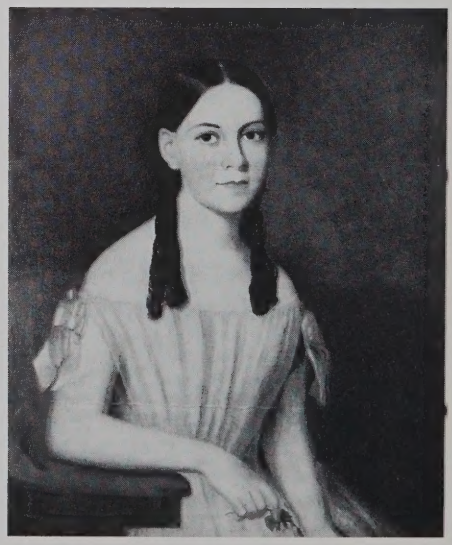

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Stolen Art

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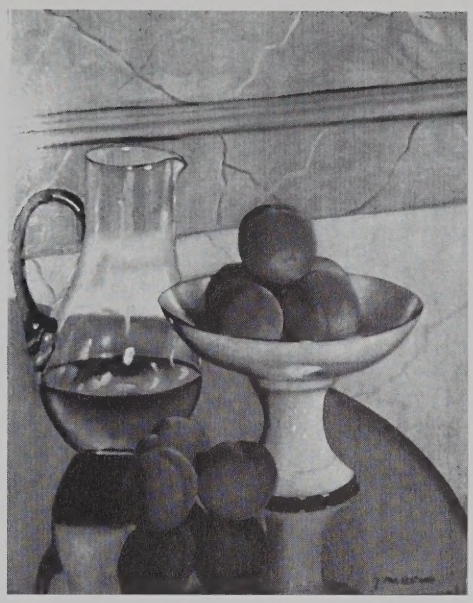

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PAINTINGS

The following paintings were stolen from a Los Angeles, CA home between June 15 and June 23, 1998. Fifteen other paintings were also stolen, including *Cavalier with Spear* by Jean-Louis-Ernest Meissonier, *Portrait of the Artist's Wife* by Conrad Pfau, and *Femme* by Jacques Favre de Thierrens.

94. Jean Louis Ernest Meissonier (French, 1815–1891). *Cavalier with Sword.* Oil on panel. 16 x 8 in. *N98.249.6.

95. J. Paul-Bertrand (French, 20th century). *Still Life.* Oil on panel. 18 x 15 in. Signed l/r. *N98.249.10.

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96. Luigi Loir (French, 1845–1916). *Figures in Parisian Park.* Oil on panel. 3¾ x 6¼ in. Signed "Loir Luigi" l/r. *N98.286.1. Oklahoma City, OK. Stolen between June and December 1997.

97

97. Louis Valtat (French, 1869–1952). *Poires et Pommes,* 1936. Oil on panel. 5 ½ x 9 in. Stamped with initials (Lugt. 1771 bis). *N98.286.2. Oklahoma City, OK. Stolen between June and December 1997.

Stolen Art

PAINTINGS

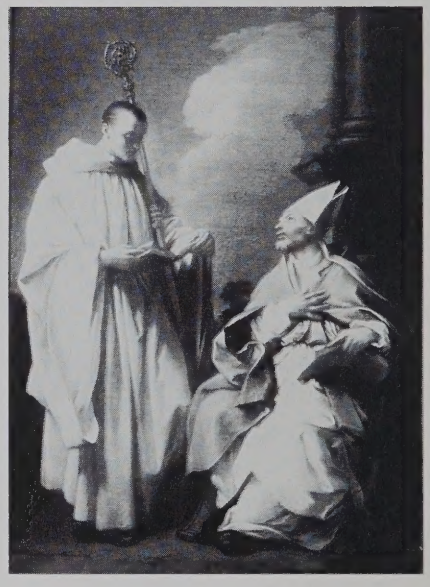
98. School of Rubens (Flemish, 17th century). *Christ with the Pharisees.* Oil on wood. 48.5 x 64.8 cm. Two cracks run horizontally across the painting. *N98.261. Stolen from a private residence in Warsaw, Poland. Aug. 25, 1996. Interpol no. E-44/4-1998.

98

99. Scene from the Life of Christ. Unsigned oil painting on a card by Maurice Denis. 40.0 x 50.0 cm. Stolen from a restorer of paintings in Prague, Czech Republic. July 16, 1997. Interpol no. E-41/4-1998.

100. Attrib to Etienne Parrocel (French, 1696–1775). *Saint Augustine and Saint Bernard,* 1744. Oil on canvas. 133.5 x 97.0 cm. Listed as an historical monument. *L98.1293.1. Stolen from a church in Carpentras, France on Feb. 26, 1998. Interpol no. E-50/4-1998.

99



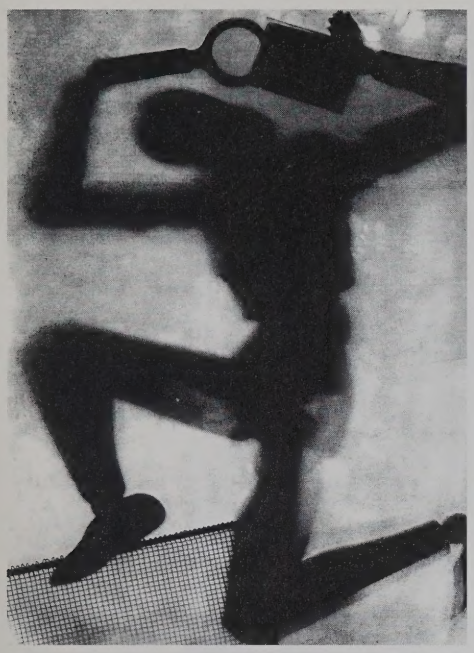
100

PRINTS

101. Andy Warhol (American, 1928–1987). *Mao,* 1972. Screenprint. 36 x 36 in. Ed. #53/250. Signed and numbered verso. *N98.247. Los Angeles, CA. July 5, 1998.

101

Stolen Art



102

103

PHOTOGRAPHS

102. El Lissitzky (Russian, 20th century). *Untitled (Mannequin)*, ca. 1923–29. Positive photogram on semi-gloss paper. 11½ x 9¼ in. Initialed by Sophie Lissitzky-Kueppers. Annotated NR4011 in pencil verso. Two Guggenheim exhibition labels on reverse of modern mount. Santa Monica, CA. June 4, 1998.

103. Edward S. Curtis (American, 1868–1954). Plate 174, *Red Whip-Astina*, 1908. 18 x 22 in. *N98.288. One of 69 photos stolen – including 64 by Curtis, 1 by Berenice Abbott, 2 by Mark Klett, 1 by Irving Penn, and 1 by Gary Winogrand – while en route from the Basel Art Fair to New Orleans between June 14 and June 30, 1998.

104

105

SCULPTURE

104. Maria Louisa Campoy. *Jinete.* Bronze.12 x 11 x 10 in. *N98.189.1. New York, NY. Jan. 31, 1998.

105. Jan Stursa (Czech, 1880–1925). *Nijinsky.* Bronze. *N98.218. New York, NY. Apr. 21, 1998.

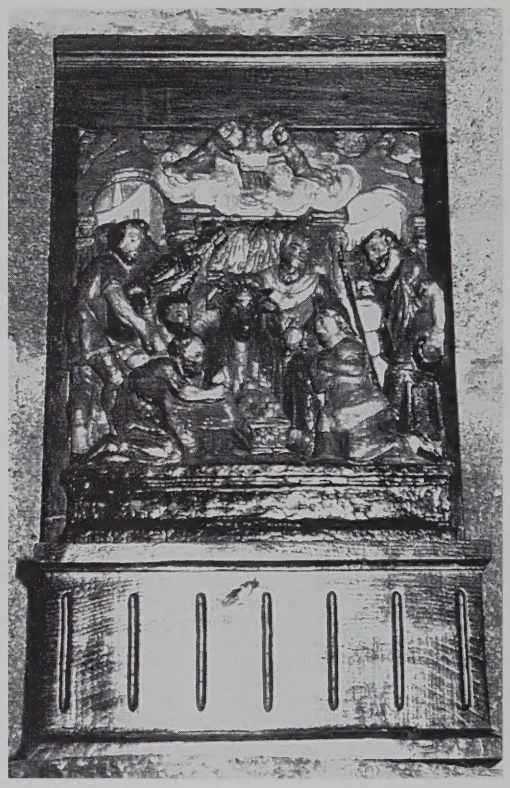
Stolen Art

SCULPTURE

106. German, 15th century. *John the Baptist.* Polychrome wood. Ht. 87.4 cm. Missing right forearm. *N98.234.2. Stolen from a church in Lemgow, Lower Saxony, Germany. Apr. 26, 1997. Interpol no. E-18/2-1998.

107. French, 16th century. *The Adoration of the Shepherds.* Polychrome wood. 40.0 x 40.0 cm. Included in the Historical Monuments Inventory. *N98.427. Stolen from a basilica in Hennebont, France on Feb. 21, 1998. Interpol no. E-51/4-1998.

106



107

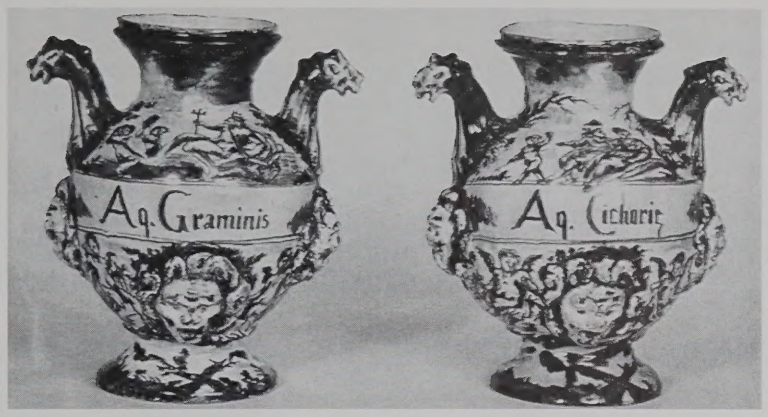
ANTIQUITIES

108. Bronze sculpture of a boar. Gallo-Roman period. Ht. 3 cm. L. 4.2 cm. *L98.1295.1. Stolen from a museum in Nantes, France between Jan. 8 and Feb. 9, 1998. Interpol no. E-48/4-1998.

109. Ochre limestone stele. Roman. Ht. 131.0 cm. W. 50.0 cm. D. 18.0 cm. *N98.251. Stolen from an open-air museum in Manavgat-side, Antalya, Turkey. Dec. 11, 1997. E-32/3-1998.

108

109



110

111

DECORATIVE ARTS

CERAMICS

110. Italian, 17th century. Pair of majolica pharmacy jars. Ht. 38.0 cm. Inscribed with the name of the city of origin, Genoa. *N98.182. Ghent, Belgium. Feb. 9, 1998. Interpol no. E-24/2-1998.

CLOCKS, WATCHES, TIMEPIECES

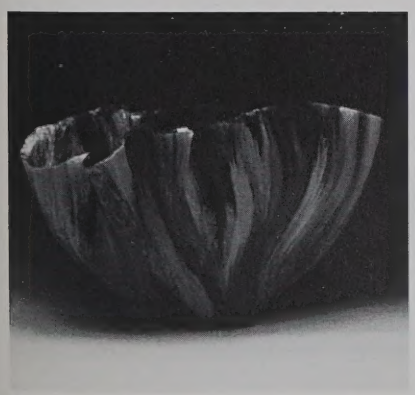
French, 18th century. Late Louis XIV. Period table clock. Ebony and red tortoise shell inlaid with pewter and brass stringing and fitted with gilt bronze mounts. Ht. 10 in. Dial and movement signed by Isaac Thuret, Horloger du Roi, 1684. Case attributed to the Gobelins workshop. Ca. 1705. *N98.266. New York, NY. July 6, 1998.

GLASS

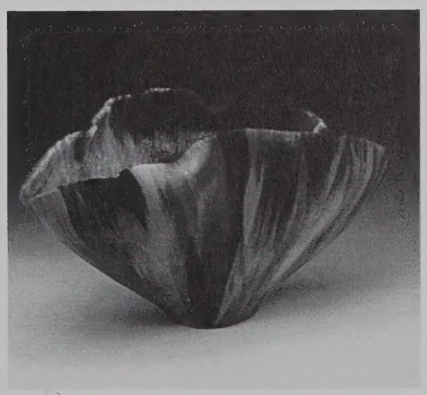
112. Toots Zynsky (American, b. 1951). *Negotiating Chaos,* 1998. Fused and thermo-formed glass. 21.0 x 39.4 x 26.7 cm. BFG# 2274. *N98.267.1. New York, NY. June 23, 1998.

113. Toots Zynsky (American, b. 1951). *Surrendering Chaos,* 1998. Fused and thermo-formed glass. 21.0 x 40.6 x 20.3 cm. BFG# 2177. *N98.267.2. New York, NY. June 23, 1998.

114. Toots Zynsky (American, b. 1951). *Four Spirit Chaos,* 1998. Fused and thermo-formed glass threads. 22.9 x 40.6 x 17.8 cm. BFG# 2041. *N98.267.3. New York, NY. June 23, 1998.



112



113

114

Stolen Art

IVORY

115. Attrib. to William Roderick (American, 19th century). Panbone scrimshaw, ca. 1850. 4⅜ x 8⅜ in. Accession number 41.448 on back. *N98.250. Stolen from the Mystic Seaport Museum, Mystic, CT. Apr. 1998.

115

Missing Art

PAINTINGS AND DRAWINGS

8. Ambrosius Bosschaert (Dutch, 1573–1621). *Flowerpiece.* Oil on panel. 16 x 22 in. *N98.165. Last seen in May 1994. Missing from the late owner's estate in Los Angeles, CA.

9. Louis Honoré Frédéric Gamain (French, 1803–71). *St. Pierre, Martinique.*Oil on canvas. 24 1/4 x 38 1/2 in. Signed, dated, and inscribed l/r "L. Gamain/St. P 1854." *N98.212. Disappeared from a New York, NY gallery prior to September 30, 1988.

10. Eugène Delacroix (French, 1798–1863). *Jeune Tigre Jouant Avec Sa Mère.* 8 x 11½ in. Pencil brown wash india ink drawing on paper. Disappeared from a Southampton, NY home between Oct. 1990 and Oct. 1997.

8

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11

Stolen

116. Fernand Léger (French, 1881–1955). *The Dancers,* 1942. Oil on canvas. 51.0 x 41.0 cm. Signed "F. Léger" l/r. *N98.240.1. New York, NY. Dec. 16, 1997.

117. Edgar Payne (American, 1882–1947). *Big Pine Lake (First Lake Inyo County California).* Oil on canvas. 22 x 26 in. Signed "Edgar Payne" l/r with title of painting verso. *N98.242. Los Angeles, CA. June 24, 1998.

118. Jean Honoré Fragonard(French, 1732–1806). *Portrait of a Boy with a Mandolin,* ca. 1773–76. Oil on canvas. 35.0 x 30.0 cm. *L97.1160.1. Stolen from a private residence in Knokke-Heist, West Flanders, Belgium between June 10 and June 30, 1997. Interpol no. E-26/2-1998.

119. Jean-Baptiste Corot (French, 1796–1875). *House and Garden.* Oil on canvas. 22.9 x 26.3 cm. Signed l/l. *N98.259. Stolen from a gallery in Prague, Czech Republic. Dec. 5, 1997. Interpol no. E-42/4-1998.

120. Jean-Baptiste Camille Corot (French, 1796–1875). *Le Chemin de Sèvres.* Oil on canvas. 34.0 x 49.0 cm. Inventory number RF 1352 stencilled on back of canvas. The painting is listed as part of the French national heritage. Stolen from the Louvre in Paris on May 3, 1998. Interpol no. E-55/5-1998.

Missing

11. William Aiken Walker (American, 1838–1921). *The Sharecroppers.* Oil on board. 6 x 12 in. Signed with initials l/l. *N98.289. Disappeared from a Chicago, IL location in May or June 1998.

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